

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
SEPTEMBER 14, 2015**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 5:45 p.m. on Monday, the 14th day of September, 2015. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack  
Lawrence T. Oden, Mayor

Absent: None

Also present were City Attorneys Whit Colvin and Steve Stine, City Manager Sam Gaston, and City Clerk Steven Boone.

**1. AGENDA**

1. Requests by Stephanie Davis and others (Appendix 1):
  - Sidewalk extension along North Woodridge Road (The Public Works Superintendent was instructed to prepare cost estimates for various sidewalk extensions and report back to the City Council on September 28, 2015)
  - Reconstruct sidewalks along South Brookwood Road that do not have a guardrail and add guardrails. (Richard Caudle of Skipper Consulting, Inc. informed the audience that widening the sidewalks is difficult for many reasons (right-of-way or easement acquisition, terrain and the need for a retaining wall, and lack of federal funds making any meaningful improvements costly) and cautioned that a guardrail does not ensure safety for pedestrians or motorists.)
  - Pedestrian crossing on South Brookwood Road at North Woodridge Road (Resolution No. 2015-132 was added to the formal meeting agenda)
  - Four-way stop sign request at North Woodridge Road and Spring Valley Court (The Police Department shall conduct a limited traffic study over the next two weeks. Notices to area residents will be mailed informing them of the proposed stop signs to be considered on Monday, September 28, 2015.)
2. Farmers' Market on Oak Street, between the clock tower and the alley from Hoyt Lane, on Saturdays this Fall – Lindsey Horne of Urban Cookhouse (Appendix 2). (The members of the City Council expressed concern about vehicular and pedestrian traffic and suggested that the applicant consider alternative locations for the farmers' market.)
3. Set date for presentations by appropriated agencies for fiscal year 2016. (The members of the City Council scheduled Wednesday, October 7, 2015 from 8 a.m. until 10 a.m. for a work session to hear from the various agencies seeking service agreements for fiscal 2016.)
4. Proposed deferred compensation (Section 457 Plan) provider change—Appendix 3. (The matter will be included in the September 28, 2015 formal meeting agenda.)
5. Roundabout project agreements with ALDOT and City of Birmingham (Appendix 4). (The members of the City Council identified several modifications that they would like to be incorporated into the documents before their formal consideration by either the Mountain Brook City Council or the Birmingham City Council.)
6. Review and discussion of the 7 p.m. City Council formal meeting agenda topics.

Upon conclusion of the City Council's review of the other formal [7 p.m.] agenda issues, Council President Smith adjourned the meeting.

**2. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A106) on September 14, 2015, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

A handwritten signature in cursive script that reads "Steven Boone". The signature is written in black ink and is positioned above a horizontal line.

City Clerk

From: Stefania Davis  
Sent: Thursday, September 10, 2015 6:21 PM  
To: Sam Gaston  
Subject: Info for Council Meeting Monday 9/14

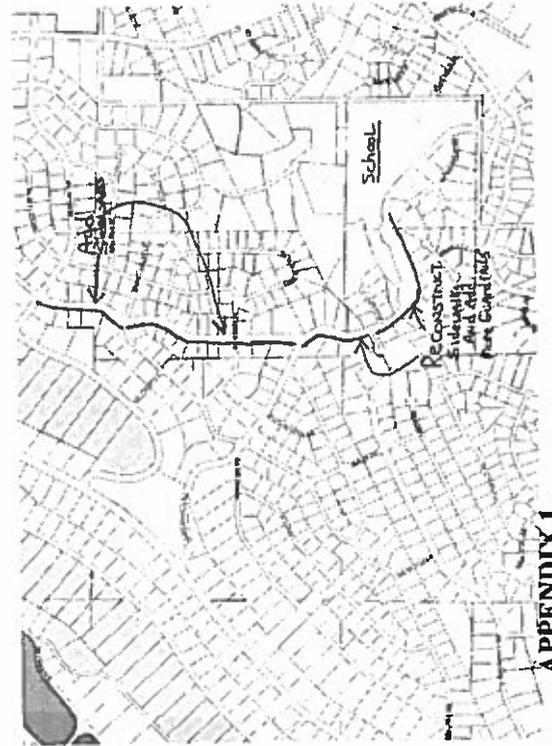
Hi Sam - Here is the info I would like to be included in the agenda packet for the meeting Monday night.

- (1) Larger safer sidewalks on South Brookwood leaving the Elementary School - I would love to see our kids have a safer sidewalk down South Brookwood by replacing what is there. Crestline & MBG were approved for new sidewalks through a grant called the Safer Route to School. BWP & Cherokee Blvd were not approved for the grant & it is no longer available. I would love to see what we need to do to get the ball rolling on wider sidewalks and maybe grant talk of some sort. I feel like this could also help alleviate some of the car pool problems we have.
- (2) Crosswalk at S Brookwood & North Woodridge Intersection - lots of our kids walk to the circle after school and could keep coming further if they had a safe way to cross the street near North Woodridge. There are lots of us adults who run/walk in the neighborhood & this would also help us when trying to cross.
- (3) Sidewalk completed on North Woodridge to Bethune - We would like to see the stretch of North Woodridge (where it starts at the bottom of the hill on North Woodridge and picks back up on Bethune) added to the list on the Master Sidewalk plan.
- (4) 4 way stop at North Woodridge & Spring Valley Ct.

I have 3 people who have committed to be in attendance at the meeting. I am working on the number of children we have in our neighborhood. The crosswalk will benefit everyone in the area.  
Thanks so much and please let me know if I need any more information to have on hand.  
Sincerely,  
Stefania Davis

Stefania Davis  
Roden & Fields  
www.stefanidavis.mvrandf.com  
205.541.6208

9/11/2015



APPENDIX 1

South Brookwood Road at North Woodridge Road  
Mountain Brook, Alabama

Professional Services Agreement

South Brookwood Road at North Woodridge Road  
Mountain Brook, Alabama

Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT**  
Between  
The City of Mountain Brook and Skipper Consulting, Inc.

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 88 Church Street, Mountain Brook, Alabama 35213 and, Skipper Consulting, Inc. ("Consultant"), doing business at 3844 Vera Road, Suite 105, Birmingham, Alabama 35226.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic study for the intersection of South Brookwood Road at North Woodridge Road (the "Project" or "Services");

WHEREAS, the parties intend that the Consultant be authorized to start work on the services outlined in this agreement upon execution of this Agreement, and

WHEREAS, the Client and Consultant agree that the Services be performed pursuant to the terms of this Agreement, together with the attached Exhibit A and the Addendum related hereto, which writings constitute the entire agreement between them relating to this assignment.

1. **PROFESSIONAL SERVICES:** The Consultant agrees to perform the following Services under this Agreement

SEE SCOPE OF WORK SET FORTH ON EXHIBIT 'A'

The Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the ordinary progress of the Project.

2. **CLIENT'S RESPONSIBILITIES:** Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedule and similar information that is contained in its files. The Consultant may rely on the information provided by the Client without verification.

The Client will designate a representative who shall have the authority to act on behalf of the Client for this project.

The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.

3. **COMPENSATION BILLING/PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and services outlined in Exhibit 'A' for a fixed fee (inclusive of all expenses) of \$1,888.00.

The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncompleted amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such changes. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or services other than those contemplated herein shall be performed without the written approval of the Client.

If for any reason, payment for uncompleted amounts reflected on invoice is more than 30 days delinquent, the Consultant shall have the right to stop work on the assignment until such payment is made. The Consultant will not be liable for any delays to project schedules caused for such work stoppage.

4. **STANDARD TERMS AND CONDITIONS**

The Client shall have final right of review and approval of all plans and specifications that shall be delivered in connection with the performance of the Services; however, review and approval shall not be withheld unreasonably.

The rights and obligations of the parties to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Either party may terminate this Agreement upon 10 days' written notice to the other party should the defaulting party substantially fail to perform any or its material responsibilities in the Agreement through no fault of the party desiring to terminate. In the event of termination of this Agreement, due to the fault of a person or party other than the Consultant, Consultant shall be paid for Services performed to termination date.

The Consultant agrees to furnish consulting services only related to the Project. Consultant shall be responsible for coordination of its work with that of Client.

This Agreement (including Exhibit A and the Addendum) shall constitute the entire agreement between the parties concerning the matters herein, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated into this Agreement.

Any modification or amendment of this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.

The failure of a party to this agreement to insist upon the performance of any of the terms and conditions of this agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision, in the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Neither party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the cause of such failure shall occur due to events beyond a party's reasonable control, include, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

Consultant shall secure and maintain such insurance as is reflected on the Addendum.

Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

South Brookwood Road at North Woodridge Road  
Mountain Brook, Alabama

Professional Services Agreement

The Client's review of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

The persons signing this Agreement warrant that they have the authority to sign on behalf of the Client and Consultant.

CLIENT: CITY OF MOUNTAIN BROOK, AL.	CONSULTANT: SKIPPER CONSULTING INC.
By: _____	By: <u>[Signature]</u>
Printed Name: _____	Printed Name: _____
Title: _____	Title: President
Date: _____	Date: 9/8/13

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South Brookwood Road at North Woodridge Road  
Mountain Brook, Alabama

Professional Services Agreement

EXHIBIT "A"  
SCOPE OF WORK

The Consultant shall perform a traffic study to determine the advisability for the installation of a pedestrian crosswalk crossing South Brookwood Road at North Woodridge Road. There is an existing sidewalk on the north side of North Woodridge Road and also on the west side of South Brookwood Road. Pedestrians must cross South Brookwood Road in an uncontrolled manner to transfer from one existing sidewalk to the other. The roadway geometry of South Brookwood Road in the vicinity of the intersection results in limited sight distance related to vehicles traveling northbound on South Brookwood Road due to horizontal and vertical curvature of the roadway. Therefore, a detailed traffic study needs to be performed to determine if it is advisable to mark a pedestrian crossing of South Brookwood Road at the intersection, or determine what conditions would be required to make a marked crossing advisable.

The following is the scope of work proposed for the project

- Obtain and review the latest traffic count and speed study for South Brookwood Road recently performed by the Mountain Brook Police Department.
- Obtain and review crash reports for the intersection from the Mountain Brook Police Department.
- Perform a 24 hour machine traffic count on North Woodridge Road.
- Perform a.m. and p.m. peak period intersection turning movement traffic count at the intersection of South Brookwood Road at North Woodridge Road.
- Perform a.m. and p.m. peak period observations at the intersection of South Brookwood Road at North Woodridge Road.
- Perform the following sight distance measurements:
  - Intersection sight distance for drivers exiting North Woodridge Road
  - Sight distance for pedestrians crossing across South Brookwood Road
  - Sight distance for drivers on South Brookwood Road approaching a pedestrian crosswalk on South Brookwood Road
- Compare sight distance measurements to industry standards.
- Perform a we run study and intersection capacity analysis for installation of a multi-way stop at the intersection of South Brookwood Road at North Woodridge Road.
- Develop recommendations based on analysis and observations.
- Document the results of the study in a report.
- Attend as many meetings with the City of Mountain Brook as required to reach a conclusion regarding recommendations to be implemented.

Schedule

The Consultant shall perform the scope of work as documented in Exhibit A, up to and including the report within a period of three (3) calendar weeks following notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

APPENDIX 1

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. - TRAFFIC ENGINEERING SERVICES (SOUTH BROOKWOOD ROAD AT NORTH WOODRIDGE ROAD)

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT ("this Addendum") between the City of Mountain Brook, Alabama ("the City") and Skipper Consulting, Inc. ("the Contractor") is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties ("the Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) restrict, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without the express approval of the Mountain Brook City Council.

1. Definitions. For purposes of this Addendum, the terms below have the following meanings:

- A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."
- B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
- C. "The Contractor" refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

2. Dispute Resolution. If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder ("Dispute"), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agrees to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution

mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

3. Attorney's Fees; Court Costs; Litigation Expenses. The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. Late Payment Charges; Fees; Interest. The City shall not be liable for any late payment charges, interest, or fees on a City request bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

5. Indemnification; Hold Harmless; Release; Waiver; Limitations of Liability or Remedies. The City shall not and does not intend to, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or in respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof, nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in private herewith or acting on the Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

6. Choice of Law; Choice of Venue or Forum. The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or enforce relief by means of any court of law or equity shall be in the County of Jefferson, Alabama, except to the extent otherwise required by applicable principles of law.

7. Construction of Addendum. Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

8. Independent Contractor. Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

9. Contractor's Insurance Requirement. For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance with a company(ies) lawfully authorized to do business in the location of the Project and reasonably acceptable to the City:

1. Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and property damage with a combined single limit of not less than \$500,000 per occurrence.

2. Automobile Liability: If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

3. Workers Compensation: Workers' Compensation and Employer Liability as required by statute.

4. Professional Liability: If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional named endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. Indemnification for Claims by Third Parties. The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitee") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claims") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by

the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform obligations in the Agreement.

11. ACCEPTANCE AND ACKNOWLEDGEMENT OF ANY ACTION OF ANY AGREEMENT OF THE MAX DAMAGES BY APPEARS FROM THE COMMERCIAL INTO THIS AGREEMENT CITY BE LIABLE CONSEQUENTIA WITHOUT LIMIT REVENUES OR INTENDED TO BE IDENTIFICATION CONTRACTOR'S THE CITY BY IT

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CITY: CITY OF MOUNTAIN BROOK CONTRACTOR: SKIFFER CONSULTING INC. By: [Signature] Printed Name: [Name] Title: [Title] Date: [Date]

APPENDIX 1

NORTH WOODRIDGE SIDEWALK EXTENSION FROM WESTBURY PLACE TO BETHUNE DRIVE

Table with 2 columns: Item description and Price. Items include 2500 sq ft of sidewalk, crosswalks, ADA bricks, tree removal, power pole relocation, misc. columns, landscaping, forming materials, misc. materials, and water meter relocation.

These prices are subject to change due changing prices of materials.

SOUTH BROOKWOOD RD. SCHOOL SIDEWALK

Table with 2 columns: Item description and Price. Items include install new guardrail along sidewalk and sidewalk modifications.

These prices might change due to the rising cost of materials.

Memorandum

To: Lt. C. Clark  
From: Sgt. J. Rhoads  
Date: 9/10/15  
Re: Traffic Count North Woodridge Road near South Brookwood Road

Per your request, I conducted a traffic count on North Woodridge Road. Data was gathered concerning speed and volume. The following data was gathered:

Southbound traffic flows toward South Brookwood Road  
Northbound traffic flows toward Spring Valley Ct.

Conclusion: This study began Thursday September 3<sup>rd</sup> and continued through Wednesday September 9<sup>th</sup>. Peak travel times for the weekdays included morning and afternoon commute hours. Traffic was also heavy during lunchtime. During the two weekend days, traffic volume was heavier around lunchtime and 6:00pm.

Note: Speed limit is 30 mph.

Cc: Chief T. Cook  
Captain G. Hagood

Sam Gleason

From: Lindsay Horne  
 Sent: Friday, September 11, 2015 7:23 AM  
 To: gleason@urbancookhouse.com  
 Subject: Fall Farmers Market

Mr. Gleason,

I appreciate your call yesterday and your willingness to help me through all the many steps necessary to put something like this on. I look forward to Monday night in hopes that everything will go smoothly.

The Farmers Market will hopefully begin the last weekend in September (24th) and run through the weekend before Thanksgiving (November 21st). If we need to push the start weekend back to the first weekend in October, that would work just fine. Our hope for this Farmers Market is to bring the community together. That is our human aim. To provide a place for family and friends to gather on a Kennedy morning to enjoy and also help our local farmers and vendors.

The time would be from 7am-11am. We would have a crew there around 6am to get everything started and set up. Also, have a crew there for breaking down as quickly as possible to open that road back up. We would direct the vendors to park in the employee parking deck over off of Houston to allow for customers in Crestline to not have to see much parking because we know this is a huge issue. We would block off the left side of La Paz parking down to Oxy's, with an area for cars to turn out of the alley.

I do not have a list of vendors yet just because I am wanting to ensure the appropriate permits are to look them on while we are getting all of the logistics finalized. I hope we can make this happen and bring more visitors and more of our own community together. Thank you again for all of your help.

Lindsay Horne  
 Urban Cookhouse  
 678-674-6747 Cell Phone  
 www.urbancookhouse.com



**Crestline Village Neighbors.**

We are so excited to announce that an Urban Cookhouse Fall Farmers Market is in the works for this fall. Considering the summer market had its kinks this year, but we are working hard to make it happen in the next couple of weeks.

As our neighbors, we would love to get you all involved in anyway possible. If that is having a hand at the market, or helping to spread the word to all of your friends and family in the area.

We are planning to have the market every Saturday from 7am to 11am starting in September through the middle of November. We know that parking in Crestline is a huge issue and we make for a huge headache when trying to accomplish something like this. Our plan is to use the road behind Urban Cookhouse and Oxy's. We would have it blocked off in the morning and we would have a crew standing by to make the tear down once the market is complete as fast and easy as possible.

Farmers' Markets are a great way to bring community together. Crestline is a very unique community because a person could drive through the village every day for a month and sometimes miss out on a lot of the shops and restaurants just because of where it is located. We can put all of our shops and restaurants in one place and partner with farmers and vendors in the Birmingham area to create a wonderful gathering and tradition for family and friends alike.

Thank you in advance for your support and please feel free to call or email us with any questions or concerns.

Urban Cookhouse  
 (Lindsay Horne-6784434177 or [lindsayhorne@urbancookhouse.com](mailto:lindsayhorne@urbancookhouse.com))

Mid-September

City of Mountain Brook  
 EVENT PERMIT APPLICATION  
 FOR EVENT, PARADE, PROCESSION, OR OTHER ASSEMBLY  
 (Application submitted ten days before the event may not be approved)

Date: 9/10/15 Individual or organization: URBAN COOKHOUSE  
 Contact Information:  
 (1) Name: Lindsay Horne (2) Title: MANAGER  
 (3) Address: 212 COUNTRY CLUB BLVD  
 (4) Tel. No. \_\_\_\_\_ (5) Cell No.: 678-663-6177  
 (6) Email address: lindsayhorne@urbancookhouse.com

Describe the type, nature, character and purpose of the event (list all activities):  
FALL FARMERS MARKET

Give the inclusive date(s) of the event: Sept 26 - NOV 21 Every Sat 7-11

Give the number and composition of the event:

Composition	Number
People (including walking)	<u>YEG</u> approx 20 vendors and guests
Motor Vehicles	_____
Flora	_____
Animals	_____
Other	_____

Identify the place, area, locality, and/or route of the assembly:  
ONE STREET FROM LA PAZ TO OXY'S

Will it be necessary to block any street or sidewalk during the course of the assembly/event? YES

If so, explain: FROM LA PAZ TO OXY'S

Will alcoholic beverages be sold on-site or served? If so, explain circumstances: NO

Will money be collected? If so, explain circumstances: \_\_\_\_\_

Will signs, placards, banners, flags or cards be displayed? YES

List all vendors who will be supplying food, drink(s), games, music, etc.:  
I do not have a list yet. WANTING TO GET APPROVED FIRST. WILL HAVE LIST OF VENDORS

Applicant Signature: Lindsay Horne  
 Telephone Number: 678-663-6177

9/11/2015

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Lorraine T. Oden, Mayor OR Sam S. Gleason, City Manager

**Parade Safety & Restrictions:**

- Candy or other objects shall not be thrown or otherwise transferred to anyone along the parade route from vehicles or floats that are active within the parade.
- No occupying along the parade route.
- All float drivers must be properly licensed and insured. All drivers should be adults.
- All floats must have adequate lines of vision for the the drivers to see.
- No float or parade participant may turn out of the designated parade route without police approval and direction.
- No float participating in the parade event shall exceed 13 feet in height as measured from the ground to the highest point of the float.

\*Child-restraint seats are prohibited from use in parades. Public safety officers at these activities may require families register their child-restraint seats with the parade committee. Public safety officers may require the registration of the parade and all participants before parades. Organizing groups must ensure all drivers in the parade are properly licensed and insured.

I have read, understood and agree to comply with these guidelines. \_\_\_\_\_

**Police Department Remarks:**

\_\_\_\_\_  
 \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Revenue Department Remarks:**

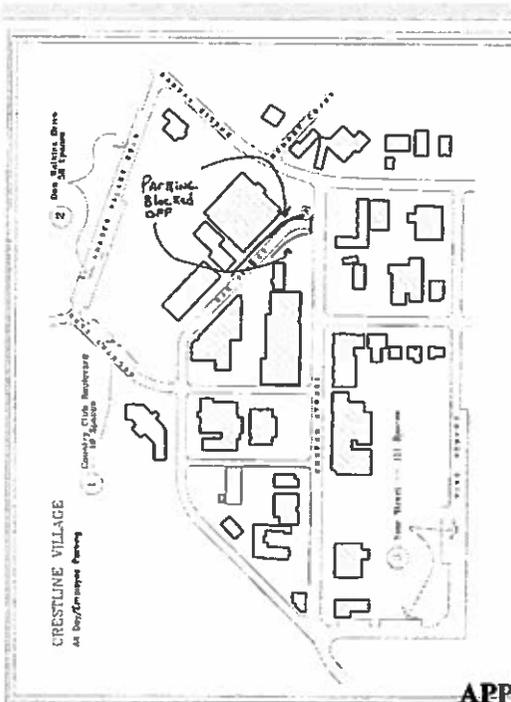
\_\_\_\_\_  
 \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

The approved application serves as the permit.

If you have any questions, please contact Davis Remy at 862-1800 or [dremy@mtbrct.org](mailto:dremy@mtbrct.org)

Effective 10-1-2014



APPENDIX 2



CITY OF FOUNTAIN BROOK  
P. O. Box 138999  
Oroville, Oregon 97133-8999  
Telephone: 503-692-3400  
www.fountainbrook.org

Subject: Deferred Compensation Plans  
To: Sam Green, City Manager  
From: Sarah Bomer  
Date: August 24, 2015

The City offers four deferred compensation plans and has one other dormant plan. The deferred compensation plans include:

Provider	Assets	Employee Participants
Lazard (Former)	\$ 164,183	5
Mutualshare Retirement	\$ 970,000	16
Voya	\$1,450,647	19
Voya (closed to new participants)	Unavailable	N/A

The four dormant (old) plans... and since their introduction into the City's benefit plan. There is no out-of-pocket cost to the City as all fees and expenses are assessed against participants by way of fund net asset charges and administrative fees.

In 2009, the State of Alabama issued an RFP and awarded its contract to Great Midwest (now Empower Retirement) which offered the lowest fee proposal at the time. The State contract includes performance goals and standards that are reviewed and evaluated quarterly by the State. Failure to achieve the performance standards subjects Empower to financial penalties. The contract will be put out to bid periodically to ensure that the State's provider continues to offer the most competitive deferred compensation products in the market.

Due to the complexity of developing an RFP and soliciting and evaluating the proposals, I suggest that the City piggyback off of the State's plan. Participation in the State's \$540 million deferred compensation plan is elective and auto-enrolling. The benefits, in any amount, include:

1. Consolidating 3 plans into 1 (RSA-1) will remain along with Empower
    - o Reduces plan options which should lead to less attrition by employees over plan selection and hopefully lead to increased participation
    - o Streamlines the payroll administration function for the City
- As inactive plans close over time, fewer accounts to manage by the City (from a fiduciary perspective)  
Routine contract evaluation (from service and pricing perspectives) by the State



Banking Change Request Form

PLEASE PRINT LEGIBLY IN BLACK OR BLUE INK

Plan Number \_\_\_\_\_  
 \*Branch (or customer name) \_\_\_\_\_ Number \_\_\_\_\_  
 Please attach a separate branch card for each division.  
 Company Name \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone # \_\_\_\_\_ Fax \_\_\_\_\_  
 The Primary/Title Contact is the person that we will contact if we have any questions or concerns and which the banking change is complete.  
 Primary/Title Contact: Please Print: Mr/Ms/Ms \_\_\_\_\_ Title \_\_\_\_\_  
 (First Name) (Last Name) E-mail Address \_\_\_\_\_  
 Telephone # \_\_\_\_\_ Extension \_\_\_\_\_

CONTINUE TO PAGE 3

STATE OF ALABAMA DEFERRED COMPENSATION PLAN

Request for Information as a Participating Employer

Identifying Information about the Participating Employer

Participating Employer: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Who is the primary contact for your side of the State Plan?  
 Contact Name: \_\_\_\_\_  
 Telephone & Fax number: \_\_\_\_\_

The Participating Employer certifies the following two statements that it: (1) is a political subdivision of Alabama, or is an agency or component of the State or such a political subdivision; (2) is a bona fide entity in public entity or component regulated pursuant to the laws of Alabama.

Participating Employer's Overview

For this Participating Employer, the State Plan is the only 401(k) 457(b) plan OR the State Plan is in addition to one or more other defined contribution plans.

The attached includes a plan-to-plan transfer of all assets of an existing eligible deferred compensation plan. (If the State Personnel Board requires prior approval of a Participating Employer, call the Board at 1-800-995-9952 to arrange for the transfer of assets and records.)

Required provisions

Every eligible former participant in the Plan, and eligible participant-terminated member and rollover into the State Plan

\_\_\_\_\_

you submission does not to other contributions and necessary information.)

If the Participating Employer maintains any defined contribution plan other than this State Plan, the Participating Employer must apply all provisions that involve nondiscrimination testing and any other rules or terms plans. With respect to the broad effect of the provisions, assume the Participating Employer must monitor and apply the deferral limits required by 26 U.S.C. § 402(a)(1) and 26 C.F.R. §§ 1.402(a)-1 and 1.457(a)-1. For example, a Participating Employer must limit its participant's elective deferrals to \$17,500 (for 2015) counting all deferrals under all eligible deferred compensation plans of any employer.

A Participating Employer may provide its participants concerning contributions their wages for pay periods after the termination is effective. But a participant's Plan Account cannot be opened under the State Plan and can be transferred only on his or her proper election.

Date \_\_\_\_\_ Signed \_\_\_\_\_  
 Official's name \_\_\_\_\_  
 Official's title \_\_\_\_\_  
 Plan Authorized Signer: \_\_\_\_\_  
 Breakable attachment: PFC fee in a Bank Authorization  
 See reverse side for more instructions.

EMPLOYEE'S REQUEST

P.O. Box 1488

Dept 388 - 475

Montgomery, AL 36103

Date \_\_\_\_\_

OR Automated Clearing House Account # (insert if Retirement Plan P or P does accept this as being sufficient) is effective \_\_\_\_\_

Effective Date \_\_\_\_\_

Plan Sponsor's Name \_\_\_\_\_

The Plan Sponsor has engaged Great West of Retirement Services (GreatWest Financial) to be the recordkeeper for the \_\_\_\_\_

Plan (or Plan)

(The Plan) is subject to the Plan B cover. The Plan B cover advantages that GreatWest Financial is a non-qualified custodian and that it is Plan Sponsor's agent of record before otherwise not designated to GreatWest Financial in a trust agreement.

To the best of EMPLOYEE's knowledge and belief, the Plan B cover (EMPLOYEE's Retirement) and its terms are not subject to the Alabama or GreatWest Financial's jurisdiction.

The Alabama or GreatWest Financial's jurisdiction is not subject to the Alabama or GreatWest Financial's jurisdiction.

Supporting Financial Institution: \_\_\_\_\_

Company's Depository Financial Institution: \_\_\_\_\_

Company Address \_\_\_\_\_

Account Title \_\_\_\_\_

Account Type:  IRA  401(k)  457(b)  Other  \_\_\_\_\_

Access:  Full  Limited  Other  \_\_\_\_\_

Direct Deposit:  Yes  No  Other  \_\_\_\_\_

The Plan Sponsor agrees to provide a check of \_\_\_\_\_

Authorized Plan Representative: \_\_\_\_\_

I grant/revok \_\_\_\_\_

Signature \_\_\_\_\_

Phone # \_\_\_\_\_

Date \_\_\_\_\_

EMPLOYEE'S FINANCIAL INSTITUTION: \_\_\_\_\_

PLEASE COMPLETE AND FAX OR EMAIL TO EMPLOYEE RETIREMENT

FAX NUMBER: (205) 691-6226

EMAIL: eecor@stateofalabama.gov

Send the original of this form to:

L. Duane Moore, Jr.  
Team of Advisors Personnel Department  
300 Public Administration Building  
Montgomery, AL 36104-1400

See also page 6 of the form or PFC's Handbook or

In order to receive a copy of the form and Plan C, contact:  
Employee Relations |  
420 South Union Street, Suite 2100  
Montgomery, AL 36104

We may be in Birmingham by copy - 1-334-248-4873.

Please be sure to read the completed and signed form to be a plan.

Look for an e-mail to the e-mail address you provided as a confirmation that the State Personnel Board approved your submission as a Participating Employer.

Do NOT send any money to the Board or to the State Personnel Board. If you do not receive the confirmation that you are an approved employer, you may be required to provide additional information.

Plan Service Center Authorization Form



This form is used to request access and passwords to the Plan Service Center (PSC) address. The state of Alabama is the Plan Sponsor, as identified in Part 1, and any authorized plan parties for which authorization request. This form includes information regarding plan data and access, and covering service requirements. The PSC is only available to the Plan Sponsor and its authorized representatives. The PSC address for any or all of the following will remain the same unless the PSC administrator request has been submitted.

Part 1: PLAN SPONSOR CONTACT

Plan Name	Plan Identifier
Current Name	Plan Center
Current Email	Address
Current Contact	Current Password
Address	
City	State
Telephone Number (PSC)	Fax Number
Plan Email	

Part 2: PLAN SERVICE CENTER (PSC) LOGIN REQUEST

ACCESS LEVELS AVAILABLE

EMPOWER includes the ability to view plan and participant information, complete information order reports, and print forms. Inquiry access is provided by default.

OPTIONAL UPGRADE ACCESS: User of the following upgrade access levels can be in addition to inquiry access:

- Plan and Participant Update: Includes the ability to enter, alter or correct participant information
- Plan and Participant Update: Includes the ability to enter, alter or correct participant information, plan data, and participant information
- Plan and Participant Update: Includes the ability to enter, alter or correct participant information, plan data, and participant information

OPTIONAL COMPLIANCE UPGRADE ACCESS: Adds a user to update compliance information, update the access list, update the time limits, and update compliance information for participants.

OPTIONAL TO DO LIST ACCESS:

- View Only: Includes the ability to view pending participant distributions and actions
- Update: Includes the ability to update pending distributions and actions

To obtain access to Plan Information through PSC, please complete the following (indications may be checked or marked) if we have a checked, indicate access to be provided or not provided by default.

To Name	Current PSC Username
E-Mail Address	Phone
User Type: Check One	Plan Employee <input type="checkbox"/> Other <input type="checkbox"/>
At Security Access as defined above is provided by default.	
By Requested Upgrade Access: Select only one option. Update <input type="checkbox"/> Plan and Participant Update <input type="checkbox"/> Plan and Participant Update <input type="checkbox"/> Plan and Participant Update <input type="checkbox"/>	
By Requested Compliance Upgrade Access: <input type="checkbox"/> Compliance Upgrade Access will not be provided if the user is not a user.	
By Requested To Do List Access: Select one option. To Do <input type="checkbox"/> View Only <input type="checkbox"/> Update <input type="checkbox"/>	

MEMORANDUM

To: Mayor and Councilors for the City of Mountain Brook
From: Steve Sims - Attorney, Nathan B. Cohen
Re: Overview - Agreements with ALDOT for Roundabout Road Project at Lane Park Road/Cahaba Road/AT RQC/Carver Road & Cost Sharing Agreement with City of Birmingham
Date: September 30, 2015

As you are aware, the State of Alabama Department of Transportation ("ALDOT") has agreed to construct the City of Mountain Brook and City of Birmingham to construct a roundabout road improvement at the intersection of Lane Park Road, Cahaba Road, Carver Road and the road that connects U.S. Highway 280 to Mountain Brook Village (the "Project"). This is ALDOT Project # CMAQ-3715. Federal highway funds will be used to pay 80% of the estimated expenses of this Project, and local funding is to pay the balance of those expenses.

ALDOT has prepared and requested that the City of Mountain Brook sign the following three agreements that are needed to build the Roundabout:

- 1. An Agreement for Right of Way (ROW) Acquisition with estimate of local ROW acquisition costs of \$360,000 (including estimated local share of \$72,000);
2. An Agreement for Preliminary Engineering with total estimate of \$515,000 (including estimated local share of \$103,000) for those costs; and
3. An Agreement for Utility and Construction with total estimate of \$2,616,000 (including estimated local share of \$523,200) to build the Roundabout improvement.

The total estimated cost of the Project is approximately \$3,500,000, and estimated local expenses to build the Roundabout approximately \$700,000.

The City of Mountain Brook will enter these Agreements subject to its understanding that Birmingham will reimburse Mountain Brook for one-half of the total local expenses which Mountain Brook will pay to ALDOT pursuant to the three ALDOT/Mountain Brook Agreements. To document this commitment by Birmingham, another agreement - the attached Cost Sharing Agreement - also must be approved by the City Councils of both Birmingham and Mountain Brook. Both City Councils must also approve the cost sharing agreement and the approval of the various agreements.

Agreement will be automatically renewed on the terms stated herein for an additional one-year period of three (3) years and continue in effect during that renewal term until the sooner of its expiration or the Project is completed. If the Project is not completed by the end of the renewal term, the Parties agree to enter good faith negotiations to extend this Agreement as needed to finalize the Project.

V. ESTIMATED COSTS OF PROJECT:

The estimated costs and expected sources of funding for the Project are as follows:

The Parties acknowledge and understand that the above amounts are estimates only. In the event the final costs of the Project exceed the estimate, Birmingham and Mountain Brook will be responsible for sharing in and paying the actual Local Expenses incurred on the Project on the proportional basis and utilizing the process described below.

VI. PROCESS FOR APPROVING, PAYMENT AND REIMBURSEMENT OF MOUNTAIN BROOK FOR LOCAL EXPENSE

- a. Each Party will designate a senior level representative who will be responsible for administration of their respective responsibilities under this Agreement (the "Contract Administrator");
b. Mountain Brook promptly will forward to Birmingham's Contract Administrator any invoices or other requests for payment of the Local Expenses that it incurs from ALDOT. Prior to any payment received by Mountain Brook, the Contract Administrators for each Party shall consult and certify in writing that the requested amount is proper and should be paid by Mountain Brook pursuant to the terms and provisions of the ALDOT/Mountain Brook Agreements. Such consultation and certification shall occur not less than 10 days before any such payment is due.
c. Following the above-described consultation and certification of ALDOT invoices, Mountain Brook will pay the amount due ALDOT under the ALDOT/Mountain Brook Agreements for the Local Expenses and promptly will notify Birmingham, in writing, upon making any such payment.

AGREEMENT FOR COST SHARING

Roundabout Improvement - Intersection
Cahaba Road/US-280/Carver Road/Lane Park Road
ALDOT Project # CMAQ-3715

The CITY OF BIRMINGHAM, ALABAMA ("Birmingham"), a municipal corporation and the CITY OF MOUNTAIN BROOK, ALABAMA ("Mountain Brook"), a municipal corporation, enter into this AGREEMENT FOR COST SHARING ("Agreement"). Mountain Brook and Birmingham individually may be referenced herein as a "Party" and collectively as "Parties."

WHEREAS, a Transportation Improvement Program has been developed by the Birmingham Urbanized Area and state transportation agencies and projects a need for such project; and

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Intermodal Surface Transportation Efficiency Act (ISTEA) as directed by the Birmingham Metropolitan Planning Organization (MPO); and hereinafter referred to as Congestion Management and Air Quality Improvement Program (CMAQ) Funds; and

WHEREAS, Birmingham and Mountain Brook desire to construct a roundabout road improvement (the "Roundabout") at or near the intersections of Lane Park Road, Cahaba Road, Carver Road and a road that connects to U.S. Highway 280 in order to facilitate the flow of traffic in that area (the "Project"); and

WHEREAS, the intersections in question are important connectors for visitors to the Birmingham Zoo, the Birmingham Botanical Gardens, Mountain Brook Village and other points in that area that are regularly accessed by the citizens of both Birmingham and Mountain Brook; and

WHEREAS, the State of Alabama Department of Transportation ("ALDOT") has designated the Roundabout Project as Project # CMAQ-3715, and Federal funds have been identified for use in conjunction with the construction; and

WHEREAS, in order to administer and implement Project # CMAQ-3715, ALDOT has requested that Mountain Brook enter into the following three (3) agreements with ALDOT: (i) an Agreement for Right of Way Acquisition that estimates for total right of way ("ROW") acquisition costs at \$360,000 and estimates the local share of that expense as \$72,000; (ii) an Agreement for Preliminary Engineering that reflects a total estimate of \$515,000 for engineering and estimates the local share of \$103,000 for those costs; and (iii) an Agreement for Utility and Construction that reflects a total estimate of \$2,616,000 to construct the Project and estimates a local share of \$523,200 to build the Roundabout (collectively, the "ALDOT/Mountain Brook Agreements"); and

4. Birmingham will remit to Mountain Brook 50% of any Local Expenses payment made by Mountain Brook to ALDOT no later than ten (10) days following each such payment.

VII. DEFAULT. The Parties acknowledge and agree that any material breach, delay or other failure by either of them to perform their respective obligations hereunder (a "Default"), which includes, but is not limited to, any delay by Birmingham in reimbursing Mountain Brook for amounts payable by Birmingham hereunder) will have a detrimental impact on the operations of the other Party. Consequently, in the event of a Default by either Party hereunder, the following understandings apply:

- (a) Default Interest: Simple interest shall accrue on any delinquent amount payable by one Party to the other hereunder at the rate of 6 percent annum until the delinquency is satisfied; and
(b) If the non-defaulting Party files litigation to enforce its rights hereunder and prevails in that proceeding, the defaulting Party shall reimburse the non-defaulting Party for all reasonable attorney's fees and costs of litigation on that it incurs to remedy any such Default; and
(c) If the defaulting Party fails to cure the Default within sixty (60) days after receipt of written notice thereof from the non-defaulting Party, the non-defaulting Party is entitled to all other remedies available to it under provisions of law, any instrument this Agreement effect, including without limitation the provision of a second written notice.

VIII. MISCELLANEOUS

- a. Each municipality who duly appropriate and finance their entire share of the Local Expenses of the Roundabout Improvement Project shall be responsible for the payment of such expenses. Mountain Brook shall be responsible for the payment of Local Expenses for the ALDOT/Mountain Brook Agreements. Birmingham shall be responsible for the payment of Local Expenses for the Roundabout Project.
b. Unless otherwise agreed in writing, the Parties expressly agree that, in the event of a breach of any provision of this Agreement, the responsibility for such breach shall be borne by the Party whose responsibility for such breach is set forth in this Agreement.
c. Except as expressly provided in this Agreement, no Party shall have any power to sue any other party which shall be the responsibility of any other contracting party.

Agreement of Birmingham... into this Agreement... the amount of the... expenses on the Project... the Agreement that a... shall be... the Mountain...

W. E. EAS, Jr. Local... to...

REAS... to be... and their respective citizens... cooperate on the... of Project and to jointly...

WHEREAS, as is common and authorized by Ala. Code §11-1-1, et seq. (1975), the joint interests of the City of Birmingham and Mountain Brook in performing the Project will be performed by Mountain Brook. Mountain Brook will perform services that are necessary to the Project and will be reimbursed by Birmingham for the cost of such services pursuant to the terms of these Agreements, and Mountain Brook and Birmingham enter into this Agreement to equitably share the Local Expenses of the Project.

NOW WHEREFORE

In consideration of the provisions and mutual covenants stated herein, and other good and valuable considerations, the accept and sufficiency of which is acknowledged, Birmingham and Mountain Brook agree as follows:

- I. IMPLEMENTATION OF PROJECT: The Project will be administered by ALDOT and the costs thereof will be financed, when eligible for Federal participation, on the basis of 80% Federal CMAQ Funds and 20% local funds. Mountain Brook will enter the ALDOT/Mountain Brook Agreements and also the Local Expense of Project payments to ALDOT contemplated in such Agreements, subject to the terms herein.
II. LOCAL EXPENSE: The Parties agree that, for purposes of this Agreement, the benefits of the Project are equal to the costs thereof. Accordingly, Birmingham will equally share the Local Expenses of the Project with Mountain Brook in the amount of 50% of the total Local Expenses.
III. EFFECTIVE DATE: This Agreement shall be effective on the date on which the last of all of the following conditions has been satisfied: (1) the City Council of Birmingham has approved the Agreement; (2) Mountain Brook's City Council has approved the Agreement; and (3) the cost of the Project has been estimated.
IV. TERM: This Agreement shall be in full force and effect for a period of three (3) years from the date of its execution, and shall continue in effect thereafter until the Project is completed. If the Project is not completed by the end of the term of this Agreement, this Agreement shall be automatically renewed for an additional one-year period of three (3) years and continue in effect during that renewal term until the sooner of its expiration or the Project is completed.

6. The execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the Parties the relationship of principal or agent or partnership or joint venture.

7. Except as otherwise provided by law and as limited by this Agreement between the parties, any party which contracts to perform or carries any service or provide pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the Agreement.

8. This Agreement shall not take effect until it has been approved by the governing body of each Party. Approval shall be by adoption of an ordinance of general and permanent operation.

9. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicate, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

10. With respect to immigration law compliance, the Parties represent and warrant that:

- (1) they do not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Business-Immigration Taxpayer and Citizen Protection Act, §31-1-1, et seq., Code of Alabama 1975, as amended (the "Act");
(2) they will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that the Party is enrolled in the E-Verify program. During the performance of this Agreement, the Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations;
(3) they will comply with all applicable provisions of the Act with respect to subcontractors, if any, that they engage on the Project entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Party on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Parties represent and warrant that they shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which the Party knows or has reason to believe is in violation of the Act; and
(4) by signing this Agreement, the contracting Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a Party found to be in violation of this

- provide shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be illegal.
  - GOVERNING LAW: This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts; and
  - Additional Understanding on Process for ROW Acquisition: Notwithstanding any terms or provisions in the Agreement for Right of Way Acquisition to be executed by Mountain Brook, ALDOT representatives have expressed a willingness to perform the ROW acquisition function for the Project that is needed to acquire land that lies in Birmingham and Mount Brook. If ALDOT performs those services, the Parties agree that ALDOT will be paid the local expense portion of costs incurred in these operations in a manner but in connection with the payment process contemplated herein. However, if ALDOT does not perform the ROW acquisition services for the Project, the Parties agree to jointly contract with a mutually acceptable third party contractor to obtain those services from that contractor.

(Sign at Page Follows)

The ALDOT/MS Agreement and the Right of Way Agreement are hereby approved.

The Mayor of the City of Birmingham is authorized to execute the ALDOT/MS Agreement and the City of Birmingham is authorized to execute the Right of Way Agreement.

This effective date of this Agreement is September 14, 2015, provided that, if within 90 days of this date the City of Birmingham has not passed an ordinance approving the Cost Sharing Agreement and that such Agreement has been in effect for 90 days, this Agreement shall be no longer in effect.

ADOPTED This 14th day of September, 2015.

\_\_\_\_\_  
 Council President

APPROVED This 14th day of September, 2015.

\_\_\_\_\_  
 Mayor

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their undersigned, duly authorized representatives as reflected below.

CITY OF BIRMINGHAM, ALABAMA

Date: \_\_\_\_\_ BY: William A. Bell, Sr., Mayor

ATTEST:

\_\_\_\_\_  
 City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT

Approved City Attorney

CITY OF MT. BROOK, ALABAMA

Date: \_\_\_\_\_ BY: Lawrence Terry Oden, Mayor

ATTEST:

\_\_\_\_\_  
 City Clerk

CERTIFICATION

I, Sarven Bozari, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an Ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its meeting held on September 14, 2015, in the manner of record of said meeting, and published by posting copies thereof on September 14, 2015, in the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 36 Church Street  
 Oakbriar Pharmacy, 2330 Cahaba Road  
 The Junction Place, 3130 Overton Road

Sarven Bozari, City Clerk

Adopted and approved on this 14th day of September, 2015.

Terry Oden, Mayor

Attest: Sarven Bozari, City Clerk

ORDINANCE NUMBER

AN ORDINANCE APPROVING COST SHARING AGREEMENT WITH CITY OF BIRMINGHAM AND ALDOTH/MS AGREEMENTS

WHEREAS, the City of Mountain Brook, Alabama ("City") and the City of Birmingham, Alabama ("Birmingham") desire to construct a roundabout road improvement (the "Roundabout") at or near the intersection of Lane Park Road, Cahaba Road, Culver Road and a road that connects to U.S. Highway 290 to Mountain Brook Village in order to facilitate the flow of traffic in that area (the "Project");

WHEREAS, these intersections are major connectors for visitors and citizens to Mountain Brook Village, the Birmingham Zoo, the Birmingham Botanical Gardens, Mountain Brook and other points in that area that are regularly accessed by the citizens of both Mountain Brook and Birmingham;

WHEREAS, the State of Alabama Department of Transportation ("ALDOT") has designated the Roundabout Project as Project # CMAQ-3715, and Federal funds have been identified for use in conjunction with its construction;

WHEREAS, in order to administer and implement Project, ALDOT has requested that Mountain Brook enter into the following three (3) agreements with ALDOT: (i) an Agreement for Right of Way Acquisition; (ii) an Agreement for Preliminary Engineering; and (iii) an Agreement for Utility and Connections to build the Roundabout (collectively, the "ALDOT/MS Agreements");

WHEREAS, pursuant to the ALDOT/MS Agreements, the City will pay ALDOT certain local funds that approximate 20% of the total costs of the Project and are not covered by Federal CMAQ funds (the "Local Expense");

WHEREAS, the Local Expense includes costs for right of way ("ROW") acquisition, preliminary engineering and utility and road construction expenses;

WHEREAS, the City is entering the ALDOT/MS Agreements on the understanding that, pursuant to that certain Cost Sharing Agreement between the City and Birmingham that is attached hereto (the "Cost Sharing Agreement"), Birmingham will reimburse Mountain Brook for one half (1/2) of the Local Expense that the City accrues on the Project; and

WHEREAS, it is in the public interest of the City and its citizens for it to cooperate with Birmingham in the implementation of the Project and for the two municipalities to equally divide and share the Local Expense;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:



The Honorable Lawrence T. Oden  
 Mayor, City of Mountain Brook  
 City Hall  
 P.O. Box 120000  
 Mountain Brook, Alabama 35213

cc: Jefferson County  
 Project No. CMAQ-27261  
 Proj. Ref. No. 08884320  
 Information Improvements Cahaba Road/  
 US-290/Culver Road/Lane Park Road

Dear Mayor Oden:

I have enclosed the original Right of Way Acquisition Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After examination by the City Council, please return the original document and this copy, with original agreement and the City seal affixed to both to the office for further handling. A certified translation, which authorizes the Mayor to sign the Agreement, affixed with the City seal should be included with the original Agreement, as well as with this copy.

If you supply me with any additional information or clarify any points contained herein, please feel free to contact me at your convenience.

Sincerely,  
 Deborah Leonard, P.E.  
 Lead Contract Region Engineer

By: [Signature]  
 James Taylor, P.E.  
 Asst. Region Engineer, Pre-Construction

LAT/ms  
 Enclosure  
 cc: Sara, Sandra K. P. Gasser  
 File: 04101

AGREEMENT FOR RIGHT-OF-WAY ACQUISITION BETWEEN THE STATE OF ALABAMA AND THE CITY OF MOUNTAIN BROOK, ALABAMA

Project CMAQ-2715 (1) Project Reference Number 18884-080 Interchange Improvements Cahaba Road/US-290/Chalver Road/Lane Park Road in the City of Mountain Brook

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and facilities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a right-of-way acquisition program for Interchange Improvements Cahaba Road/US-290/Chalver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (BPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover only the right-of-way acquisition phase of the work
(2) The right-of-way purchase under terms of this Agreement will be acquired by the CITY and in accordance with current regulations of the STATE and FHWA.
(3) The STATE shall follow all Federal regulations related to the Management, Leasing, and Disposal of right-of-way, unaccrued easements and excess right-of-way as found in CFR 23 §710 Subpart D.
(4) Funding for this Agreement is subject to availability of Federal AID funds at the time of authorization by FHWA.
(5) This Project will be administered by the STATE and all costs will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds.

Table with 3 columns: Right-of-way acquisition, Total Estimated, Estimated Federal Funds, Estimated CITY Funds. Total row shows \$140,000, \$128,000, and \$12,000.

- (6) It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share.
(7) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final bills.
(8) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the project, or delay of projects contemplated to be developed and accomplished in sequence to the current project) that Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
(9) The CITY will invoice the STATE for the Federal share of right-of-way acquisition costs not more frequently than monthly.
(10) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after completion and acceptance by the STATE of the work.
(11) The CITY will assist the STATE, if necessary, in any public involvement activities that may be required.

- (12) The CITY will provide without cost to the STATE, information available from its records that will facilitate the performance of the work.
(13) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those estimated herein and that a separate Agreement will be required for the construction of the proposed improvements.
(14) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414.
(15) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, fees, liabilities, attorney's fees or expense whatsoever or any amount paid in connection thereof arising out of or connected with the work performed under this Agreement.
(16) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
(17) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be

- deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
(18) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
(19) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
(20) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 25-1-43, Code of Alabama (2014 Law)
(21) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their officers, officials, and persons lawfully authorized, and the Agreement to be signed and to be effective on the date stated hereunder to the date of approval of the Governor of Alabama.
SEAL
ATTEST: CITY OF MOUNTAIN BROOK, ALABAMA
By: Mayor (Signature)
City Clerk (Signature)
Type name of Clerk Type name of Mayor
THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT:
BY: Chief Counsel, Jim R. Ippolito, Jr.
RECOMMENDED FOR APPROVAL:
Eam Carol Raggio Engineer, Du Jarvis Leonard, P. E.
Mubammad Transportation Engineer, Robert J. Pitts
Chief Engineer, Ronald L. Beltrivis, P. E.
STATE OF ALABAMA ACTING BY AND THROUGH THE ALABAMA DEPARTMENT OF TRANSPORTATION
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this

GOVERNOR OF ALABAMA, ROBERT BENTLEY

CERTIFICATION

Exhibit M

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient by signing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the respective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient to the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the making of any Federal lease, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-L.L.L., "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance may be placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subcontracts shall carefully and distinctly so indicate.



ALABAMA DEPARTMENT OF TRANSPORTATION

8401 CENTRAL EXPRESS
100 CORPORATE CENTER
SUITE 400
HOUSTON, AL 35840
P.O. BOX 10204
BIRMINGHAM, AL 35208-0204
TELEPHONE: 205-271-4922
June 24, 2015



The Honorable Lorenzo E. Dixon
Mayor, City of Mountain Brook
City Hall
P.O. Box 140000
Mountain Brook, Alabama 35213

RE: Jefferson County
Project No. CMAQ-0715(1)
Proj. Ref. No. US054100
Intersection Improvements Cahaba Road/US-290/Culver Road/Lane Park Road
US-290/Culver Road/Lane Park Road

Dear Mayor Dixon:

I have enclosed the original Preliminary Engineering Agreement (and one copy) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signatures and the City Seal affixed to both in this office for further handling. A certified translation, which authorizes the Mayor to sign the Agreement, affixed with the City Seal should be included with the original Agreement, as well as with this copy.

If you supply me with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

Respectfully,
Lorenzo E. Dixon, P.E.
East Central Region Engineer

By: [Signature]
LANCE TAYLOR, P.E.
Asst. Region Engineer, Pre-Construction

LAT/ra
Enclosure
Mr. Lorenzo E. Dixon
Per request.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payments under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considered settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private conciliation.

K-15-1 48

AGREEMENT FOR PRELIMINARY ENGINEERING BETWEEN THE STATE OF ALABAMA AND THE CITY OF MOUNTAIN BROOK, ALABAMA

Project CMAQ-3715 (1)
Project Reference Number 190664199
Intersection Improvements Cahaba Road/US-290/Culver Road/Lane Park Road in the City of Mountain Brook

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as the STATE, and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Urbanized Area and certain transportation improvements and priorities are Road Street; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and the CITY desire to cooperate in a preliminary engineering program for intersection improvements Cahaba Road/US-290/Culver Road/Lane Park Road in the City of Mountain Brook;

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvements Program funds (CMAQ).

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama as follows:

- 1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:
Right-of-way acquisition program for Project CMAQ-3715 (1) Project Reference Number 190664000 for intersection improvements Cahaba Road/US-290 Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council
2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf
3. That the Agreement be entered by the City Clerk and the seal of the City affixed thereto

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this

ATTESTED:

City Clerk

Mayor

I, the undersigned qualified and acting clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City of Mountain Brook, a regular meeting of such Council held on the day of 20 and that such resolution is on file in the City Clerk's office

IN WITNESS WHEREOF, I have hereunto set my hand and official seal for official use of the City on this

City Clerk

NOW, THEREFORE, the parties hereto, do, and in consideration of the premises recited herein do hereby jointly propose, stipulate, and agree as follows:

- (1) The CITY will perform or have performed all services required to fulfill the purposes of this Agreement. The East Central Region of the Department of Transportation will be the lead agency for the STATE relative to the work under this Agreement and will be point of contact for the CITY.
(2) This Agreement will cover only the preliminary engineering phase of the work.
(3) The preliminary engineering phase is hereby defined as that work necessary to advance the development of the Project through construction authorization by the FHWA. The preliminary engineering will be performed by or for the CITY and will include all environmental studies and documentation required by FHWA.
(4) Funding for this Agreement is subject to availability of Federal Aid Funds in the name of authorization by FHWA.
(5) The project will be financed, when eligible for Federal participation, on the basis of 50 percent Federal funds and 50 percent CITY funds. The estimated cost and participation by the various parties is as follows:

Table with 3 columns: Preliminary Engineering, Total Estimated Cost, Estimated Federal Funds, Estimated CITY Funds. Values: \$111,000, \$412,000, \$181,000.

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share of the final cost. It is expressly understood by both parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.

- (6) The STATE will assist the CITY in any public involvement action that may be required.
- (7) The CITY will invoice the STATE for the Federal share of the preliminary engineering costs not more frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the East Central Region Engineer for payment.
- (8) Invoices for any phase of work performed by the CITY under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (9) Any cost for work not eligible for Federal participation will be financed 100 percent by the CITY, which payment will be reflected in the final a-e-f.
- (10) The CITY agrees that in the event the FHWA determines, due to rules and/or regulations of FHWA (including but not limited to delay of the projects, or delay of projects contemplated to be developed and accomplished in response to the current projects) that the Federal funds expended on this Project must be refunded to the FHWA, the CITY will reimburse and pay to the STATE a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) Any services of the STATE necessary to carry out the intent of this Agreement will be paid as provided for herein.
- (12) The performance of the work covered by this Agreement will be in accordance with the current regulations and rules requests of the STATE and FHWA.
- (13) The STATE will provide without cost to the CITY information available from its records that will facilitate the performance of the work.

- (14) It is clearly understood by both parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein and that a separate agreement will be required for the construction of the proposed improvement.
- (15) A final audit will be made of all project records after the completion of the project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-114. A final financial statement will be made between the parties as reflected by the final audit and this Agreement.
- (16) The CITY will be responsible as all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all claims, damages, claims, loss, liabilities, monetary fees or expense whatsoever or any amount paid in compensation thereof arising out of or connected with the work performed under this Agreement.
- (17) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (18) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (17) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties herein.
- (20) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (21) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-43, Code of Alabama (7/2<sup>nd</sup> Law)
- (22) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their officers, officials, and persons thereto duly authorized and the Agreement is deemed to be done and to be effective on the date stated hereon or on the date of the approval of the Governor of Alabama.

SEAL

ATTEST: CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk (Signature) By: Mayor (Signature)

Type name of Clerk Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT:

By: Chief Counsel, Jan R. Ippolito, Jr.  
RECOMMENDED FOR APPROVAL

East Central Region Engineer, DeLoris Leonard, P. E.

Multi-modal Transportation Engineer, Robert J. Rife

Chief Engineer, Ronald L. Boléché, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION

Transportation Director, John B. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this \_\_\_ day of \_\_\_\_\_ 20\_\_

GOVERNOR OF ALABAMA, ROBERT BENTLEY

TITLE

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1552, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient to the person signing on behalf of the participant/recipient as mentioned above, in any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, or other instrument as might be applicable under Section 1552, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-L.L. "Disclosure Form on Impact Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1552, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1552, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which cover \$1,000,000 and that all such subcontracts shall comply, and therefore accordingly.

EXHIBIT M

EXHIBIT N

EXHIBIT N

FUNDS SHALL NOT BE CONSIDERED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be considered as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the estimated payment of the agreement in subsequent fiscal years.

In the event of payment of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office of Administrative Hearings or where appropriate, private mediation.

RESOLUTION NUMBER \_\_\_\_\_

BE IT RESOLVED, by the City Council of the City of Mountain Brook, Alabama as follows:

- That the City enter into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:
  - Preliminary engineering program Project CMAQ-3715 ( ) Project Reference Number 198942281 199 for interest on improvement Colaba Road/US-290 Culver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.
- That the Agreement be executed in the name of the City, by its Mayor, and in his behalf.
- That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted and approved this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

ATTESTED:

\_\_\_\_\_  
City Clerk

I, the undersigned qualified and acting clerk of the City of Mountain Brook, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City of Mountain Brook, Alabama, on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
City Clerk



The Honorable Lawrence L. Oden  
Mayor, City of Mountain Brook  
City Hall  
P.O. Box 120000  
Mountain Brook, Alabama 35213

Jefferson Covney  
Project No. CMAQ-3715 ( )  
Proj. Ref. No. 198942281  
Proj. Ref. No. 198942282  
Information Improvement Colaba Road/  
(US-290) Culver Road/Lane Park Road

Dear Mayor Oden:

I have enclosed the original Utility and Construction Agreement (and two copies) between the State of Alabama and the City of Mountain Brook, Alabama for the above referenced project.

This Agreement is submitted to the City for approval. After execution by the City Council, please return the original document and the copy, with original signatures and the City Seal affixed to both in this office for further handling. A certified recording, which authorizes the Mayor to sign the Agreement, affixed with the City Seal should be included with the original Agreement, as well as with the copy.

If you supply me with any additional information or clarify any point contained herein, please feel free to contact me at your convenience.

\_\_\_\_\_  
Loretta Taylor, P.E.  
Asst. Region Engineer, Pre-Construction

LAT/ve  
Buckham  
C. Mrs. Sandra F. P. Sumner  
File without

- period of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.
- The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are a liability for STATE reimbursement or payment under state law will be considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.
  - The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
  - The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its pro-rata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not cover the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost.
  - Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.
  - It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those estimated herein.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises aforesaid herein do hereby mutually promise, stipulate, and agree as follows:

- This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overruns in construction costs will be borne by the CITY. In the event of an under run in construction costs, the amount of Federal Aid funds will be 80 percent of eligible costs.
- The Project will be administered by the STATE and all cost will be financed, where eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	Total Estimated	Estimated Federal Funds	Estimated CITY Funds
USDMA construction, including engineering and inspection	\$2,116,980	\$1,697,580	\$419,400
<b>TOTAL</b>	<b>\$2,116,980</b>	<b>\$1,697,580</b>	<b>\$419,400</b>

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same as STATE, or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE.

- Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit. It is expressly understood by both

- The CITY agrees that in the event the FHWA determines, under its rules and/or regulations that Federal funds expended on this Project (including but not limited to delay of the project, or delay of projects contemplated to be developed and accomplished in sequence to the current project) must be refunded to the FHWA, the CITY shall reimburse and pay to the STATE for such on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Economics of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial statement will be made between the parties as reflected by the audit and this Agreement.
- The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all actions, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.
- By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or servants. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- By signing this contract, the contracting parties agree, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a

contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties herein.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the expiry of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 21-1-43, Code of Alabama (7-24- Law)
- 6) Exhibit M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their officers, officials, and persons lawfully duly authorized, and the Agreement to be signed and to be effective on the date stated hereinafter as the date of approval of the Governor of Alabama.

SEAL  
ATTEST: CITY OF MOUNTAIN BROOK, ALABAMA

BY: Mayor (Signature)  
City Clerk (Signature)

Type name of Clerk Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT:

BY: Chief Counsel, Don R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

East Central Region Engineer, Debra Jay Leonard, P. E.

Mountain Brook Transportation Engineer, Robert J. Edle

C STATE OF ALABAMA ACTING BY AND THROUGH THE ALABAMA DEPARTMENT OF TRANSPORTATION

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this day of \_\_\_\_\_, 2015

GOVERNOR OF ALABAMA, ROBERT BENTLEY

7/15/90

Exhibit M

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant or recipient above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-L.L. "Disclosure Form on Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall include in all forms and instruments, which exceed \$100,000 and that of such subsequent shall certify and disclose accordingly.

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and conditions contained herein shall not be construed as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of Alabama, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, this said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of payment of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

AIR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree to compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General Office or Administrative Hearings or where appropriate, private mediation.

RESOLUTION NUMBER

BE IT RESOLVED, by the City Council of the City of Mountain Brook, Alabama as follows:

- 1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for: Utility and reconstruct on program for Project CMAQ-3715 (J), Project Reference Numbers 10064201 and 10064202 for intersection improvements Cahaba Road/US-290/Chalver Road/Lane Park Road in the City of Mountain Brook; which Agreement is before this Council.
- 2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
- 3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted, and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2015

ATTESTED:

City Clerk Mayor

I, the undersigned qualified in Alabama, do hereby certify that the above signed and sealed by the City Council and attested by the City Clerk as follows: \_\_\_\_\_

IN WITNESS WHEREOF, I have returned my hand and affixed the official seal of the City on this \_\_\_\_\_ day of \_\_\_\_\_, 2015

City Clerk

AGREEMENT

FOR UTILITY AND CONSTRUCTION

BETWEEN THE STATE OF ALABAMA AND THE CITY OF MOUNTAIN BROOK, ALABAMA

Project CMAQ-3715 (J)  
Project Reference Number 10064201  
Project Reference Number 10064202  
Intersection Improvements Cahaba Road/US-290/Chalver Road/Lane Park Road in the City of Mountain Brook

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Birmingham Metropolitan Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for intersection improvements Cahaba Road/US-290/Chalver Road/Lane Park Road in the City of Mountain Brook.

WHEREAS, Federal transportation funds are dedicated specifically to the Birmingham area by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), as directed by the Birmingham Metropolitan Planning Organization (MPO), and hereinafter referred to as Congestion Mitigation and Air Quality Improvement Program Funds (CMAQ).

K-15-1349

- NOW, THEREFORE, the parties hereto, for, and in consideration of the promises stated herein do hereby agree, in witness whereof, and agree to follow:
- (1) This Agreement shall cover all aspects of construction on for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
  - (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overruns in construction costs will be borne by the CITY. In the event of an under run on construction costs, the amount of 80 percent of eligible cost is reimbursed by the STATE and all cost will be financed, where applicable, on the basis of 80 percent Federal funds and 20 percent CITY funds.
  - (3) The estimated cost and participation by the various parties are as follows:

	Total Estimated	Federal Funds	Estimated CITY Funds
Utilities construction, including engineering and inspection	\$1,116,800	\$1,692,800	\$122,200
<b>TOTAL</b>	\$2,616,800	\$3,392,800	\$333,200

- It is understood that if it above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share as above noted and the CITY agrees to pay same to the STATE, or in the event the cost is less than the estimate, the CITY will receive a refund accordingly from the STATE.
- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment shall be reflected in the final audit. It is expressly understood by both

- parties of this Agreement that all Federal funds will be CMAQ funds, attributable to the Birmingham area.
- (5) The CITY will coordinate any required adjustments to schedules with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under state law will be considered as a part of the Project cost and will be paid as provided herein, with the CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under state law.
  - (6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.
  - (7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract. Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its pro rata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay the estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost.
  - (8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.
  - (9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- (10) The CITY agrees that in the event the FHWA determines, under its rules and regulations that Federal funds expended on this Project (including but not limited to delay of the project, or delay of projects contemplated to be developed and accomplished in sequence in the current projects) must be refunded to the FHWA, the CITY shall reimburse and pay to the STATE for and on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal funds expended under this Agreement.
- (11) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Transportation, in accordance with Act 1994, No. 98-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (12) The CITY will be responsible at all times for all of the work performed under this Agreement and, the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all actions, damages, claims, loss, liabilities, attorney's fees or expenses whatsoever of any nature paid in compensation thereof arising out of or connected with the work performed under this Agreement.
- (13) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (14) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a

contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-43, Code of Alabama (2014) Law.
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers, officials, or persons thereunto duly authorized, and the Agreement is executed to be dated and to be effective on the date signed hereinafter as the date of approval of the Governor of Alabama.

SEAL

ATTEST

CITY OF MOUNTAIN BROOK, ALABAMA

City Clerk (Signature)

BY:  
Mayor (Signature)

Type name of Clerk

Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM AND CONTENT

BY:  
Chief Counsel, Jim R. Ippolito, Jr.  
RECOMMENDED FOR: OVAL

East Central Region Eng. Delarve L. Linnard, P. E.

Multimodal Transportation Engineer,  
Robert J. Jiles

L. Blalock, P. E.

STATE OF ALABAMA  
ACTING BY AND THROUGH THE  
ALABAMA DEPARTMENT OF TRANSPORTATION  
Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

T1896

CERTIFICATION

ELMM M

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipients, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipients each respectively certify that on the basis of the knowledge and belief of the prospective participant/recipients and of the person signing for and on behalf of the prospective participant/recipients, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipients or the person signing on behalf of the participant/recipients as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipients shall complete and submit Standard Form-115, "Disclosure Form on Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this instrument was made or entered into. Submission of this certification is a prerequisite for making or entering into this instrument imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipients also agree by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipients shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subcontracts shall certify and disclose accordingly.



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**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
SEPTEMBER 14, 2015**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber (Room A108) at 7:00 p.m. on Monday, the 14th day of September, 2015. The Council President called the meeting to order and the roll was called with the following results:

**Present:** Virginia C. Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack  
Lawrence T. Oden, Mayor

**Absent:** None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

**1. CONSENT AGENDA**

Council President Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the August 24, 2015 regular meeting of the City Council.

<b>2015-125</b>	Reappoint Henry Lapidus to the Board of Zoning Adjustment, to serve without compensation until September 25, 2018	Exhibit 1
<b>2015-126</b>	Approve the conditional use application of Dr. Craig Martin for the operation of a limited service veterinary clinic in Mountain Brook Village (Local Business District) in the modular offices located at 2129 Cahaba Road	Exhibit 2, Appendix 1
<b>2015-127 Proclamation</b>	Declare the week of September 17–23, 2015 as Constitution Week	Exhibit 3
<b>2015-128</b>	Approve the conditional [service] use application of Melanie Pounds Interior Designs located at 2822 Petticoat Lane	Exhibit 4, Appendix 2
<b>2015-129</b>	Authorize 1) the execution of a customer agreement between the City and Gorrie-Regan and Associates, Inc. with respect to the City's use of a web-based Attendance on Demand time and attendance system and 2) the purchase of two hand-punch time clocks and related maintenance agreements	Exhibit 5, Appendix 3
<b>2015-130</b>	Authorize the execution of a professional services agreement between the City and Skipper Consulting, Inc. with respect to a traffic study at the intersection of Old Leeds Road at Crosshill Road to examine intersection turning movement traffic count during the morning peak hour and to determine the impacts of implementing a protected left turn arrow at the intersection	Exhibit 6, Appendix 4

- |                 |  |                         |
|-----------------|--|-------------------------|
| <b>2015-131</b> | Increase the salary schedule for all classified and unclassified employees by 1-1/2% effective October 6, 2015 and increasing the compensation for contract security services for the City's Public Works facilities (Resolution No. 2013-146) by 1-1/2% effective October 6, 2015 | Exhibit 7               |
| <b>2015-132</b> | Authorize the execution of a professional services agreement submitted by Skipper Consulting, Inc. with respect to a traffic study to determine the advisability of installing a pedestrian crosswalk crossing South Brook Road at its intersection with North Woodridge Road      | Exhibit 8<br>Appendix 5 |

Thereupon, the foregoing minutes, proclamation, and resolutions were introduced by Council President Smith and their immediate adoption was moved by Council member Shelton. The minutes, proclamation, and resolutions were then considered by the City Council. Council Pro Tempore Pritchard seconded the motion to adopt the foregoing minutes, proclamation, and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes, Resolution Nos. 2015-125 through 2015-126, and 2015-128 through 2015-132, and Proclamation No. 2015-127 are adopted by a vote of 5-0 and as evidence thereof she sign the same.

**2. PUBLIC HEARING TO CONSIDER AN ORDINANCE (NO. 1938) ADOPTING THE CITY'S FISCAL 2016 BUDGET (APPENDIX 6)**

President Smith opened the public hearing and then asked Mr. Boone to comment on the proposed 2016 budget.

Mr. Boone:

- The 2016 budget began in May 2015, and has undergone three reviews (City Manager, Finance Committee, and City Council)
- The 2016 General Fund budget reflects a surplus of \$727,000
- Also included in the budget is:
  - o An across-the-board pay increase of 1-1/2% effective October 6, 2015
  - o The early redemption of the City General Obligation Warrants in the amount of \$3.7 million on October 1, 2015

There being no further comments, discussion, or questions, President Smith closed the public hearing and called for a motion. Council Pro Tempore Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Carl and was carried, as follows:

Ayes: Virginia Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared the motion carried by a vote of 5—0.

After said ordinance had been considered in full by the Council, Council President Pro Tempore Pritchard then moved for the adoption of said ordinance. The motion was seconded by Council member Carl. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared that the said ordinance (No. 1938) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**3. CONSIDERATION OF AN ORDINANCE (NO. 1939) AUTHORIZING A 1-1/2% SALARY INCREASE FOR THE CITY MANAGER EFFECTIVE OCTOBER 6, 2015 AND AMENDING THE RELATED EMPLOYMENT AGREEMENT (EXHIBIT 9, APPENDIX 7)**

The ordinance was introduced in writing by Council President Smith who then invited questions and comments from the audience.

There being no comments or discussion, President Smith called for a motion. Council member Shelton made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Womack and was carried, as follows:

Ayes: Virginia Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared the motion carried by a vote of 5—0.

After said ordinance had been considered in full by the Council, Council member Shelton then moved for the adoption of said ordinance. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared that the said ordinance (No. 1939) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**4. ANNOUNCEMENTS REGARDING THE NEXT REGULAR MEETING OF THE CITY COUNCIL**

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, September 28, 2015 at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site ([www.mtnbrook.org](http://www.mtnbrook.org)) for more information.

**5. EXECUTIVE SESSION AND ADJOURNMENT**

There being no further business to come before the City Council, it was moved by Council Pro Tempore Pritchard that the City Council convene in executive session to discuss a matter involving a pending real estate negotiation. The motion was seconded by Council President Smith. The City Attorney certified that the subject matter of the executive session is allowed pursuant to the Open Meetings Act. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard, III, Council President Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Council President Smith declared that the motion carried by a vote of 5—0 and then asked that the members of the audience be excused. She also announced that the City Council shall not reconvene upon conclusion of the executive session.

**6. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A108) on September 14, 2015, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.



City Clerk

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**EXHIBIT 1**

**RESOLUTION NO. 2015-125**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Henry Lapidus is hereby reappointed as to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end September 25, 2018.

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**EXHIBIT 2****RESOLUTION NO. 2015-126**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional use application submitted by Craig Martin for an outpatient veterinary clinic/grooming facility at 2921 Cahaba Road, in accordance with the operational characteristics outlined in the letter submitted by the applicant, and subject to the following specific conditions:

1. No outdoor runs;
2. Business to be conducted wholly within the building;
3. No overnight boarding;
4. Appropriate measures be employed to minimize noise, odors, waste or other negative impacts incidental to operation of the business.

**APPENDIX 1****EXHIBIT 3****PROCLAMATION NO. 2015-127**

**WHEREAS**, The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

**WHEREAS**, September 17, 2015, marks the two hundred twenty-eighth anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention; and

**WHEREAS**, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebration which will commemorate it; and

**WHEREAS**, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17th through 23rd as Constitution Week;

**NOW, THEREFORE**, I, Lawrence T. Oden, by virtue of the authority vested in me as Mayor of the City of Mountain Brook, do hereby proclaim the week of September 17th through 23rd as

**CONSTITUTION WEEK**

and urge all residents to study the Constitution, and reflect on the privilege of being an American with all the rights and responsibilities which that privilege involves.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Mountain Brook to be affixed the 14th day of September of the year of our Lord 2015 and of the Independence of the United States of America, the 239th.

---

Lawrence T. Oden, Mayor

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**EXHIBIT 4****RESOLUTION NO. 2015-128**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional service use application submitted by Melanie Pounds for an interior design studio at 2822 Petticoat Lane.

**APPENDIX 2**

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**EXHIBIT 5****RESOLUTION NO. 2015-129**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of the Gorrie-Regan and Associates' Attendance on Demand Order Form and related Customer Agreement, in the form as attached hereto as Exhibit A subject to such minor changes as may be recommended by the City Attorney and agreed to by the vendor; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the issuance of a purchase order for the implementation of the aforementioned Attendance on Demand service and the purchase of two (2) hand-punch time clocks (\$3,000 each) to be installed at the City's Parks and Recreation Department and The Emmet O'Neal Library and authorizes the execution of such other documents that may be determined necessary with respect to said purchases.

**APPENDIX 3**

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**EXHIBIT 6****RESOLUTION NO. 2015-130**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of the professional services agreement submitted by Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, with respect to a traffic study at the intersection of Old Leeds Road at Crosshill Road to examine intersection turning movement traffic count during the morning peak hour and to determine the impacts of implementing a protected left turn arrow at the intersection.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Manager is further authorized to issue a purchase order and to execute such other documents that may be determined necessary with respect to said project.

**APPENDIX 4**

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**EXHIBIT 7****RESOLUTION NO. 2015-131**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that effective October 6, 2015, the salaries of all employees (classified and unclassified) of the City of Mountain Brook, Alabama, including employees of The Emmet O'Neal Library Board and Parks and Recreation Board, shall be increased by one and one-half of one percent (1-1/2%) over the current salary schedule.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that

effective October 6, 2015, the compensation for contract security services for the City's Public Works facilities, as previously authorized upon the adoption of Resolution No. 2013-146 on October 14, 2013, shall also be increased by one and one-half of one percent (1-1/2%)

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**EXHIBIT 8**

**RESOLUTION NO. 2015-132**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of the professional services agreement submitted by Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, with respect to a traffic study to determine the advisability of installing a pedestrian crosswalk crossing South Brook Road at its intersection with North Woodridge Road.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Manager is further authorized to issue a purchase order and to execute such other documents that may be determined necessary with respect to said project.

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**APPENDIX 5**

**FISCAL 2016 BUDGET ORDINANCE**

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**APPENDIX 6**

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**EXHIBIT 9**

**ORDINANCE NO. 1939**

**AN ORDINANCE TO INCREASE THE SALARY OF THE  
CITY MANAGER OF THE CITY OF MOUNTAIN BROOK, ALABAMA**

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**BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama, as follows:

Section 1. Effective October 6, 2015, the salary of the City Manager of the City of Mountain Brook shall be increased to six thousand one hundred forty-seven and 10/100 dollars (\$6,147.10) bi-weekly.

Section 2. The Mayor is hereby authorized to execute an [amended] employment agreement to reflect the revised base salary described in Section 1 above, in the form as attached hereto as Exhibit A, between the City and City Manager.

Section 3. All ordinances and resolutions concerning the salary and employment agreement of the City Manager which have been adopted previously are hereby repealed.

Section 4. This ordinance shall become effective when published by posting the same as required by law.

---

**APPENDIX 7**



CITY OF MOUNTAIN BROOK

Dana D. Hazen, AICP
Director of Planning, Building & Sustainability
Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3821
Fax: 205.879.6913
hazend@mtnbrook.org
www.mtnbrook.org

PROPOSED SATELLITE VETERINARY OFFICE FOR CRAIG MARTIN DVM, BARBARA MONAGHAN DVM AND CINDY WILLIAMS DVM (PARTNERS OF LIBERTY ANIMAL HOSPITAL PC)

DATE: September 14, 2015
TO: Mayor, City Council and City Manager
FROM: Dana Hazen, Director of Planning, Building & Sustainability
RE: Conditional Use Satellite Out patient Veterinary Office for Liberty Animal Hospital 2921 Cahaba Road (previous State Farm office)

Shed letter from the applicant regarding the proposed operational characteristics. It appears letter that the proposal meets the conditional use ordinance (see below) with respect to runs, overnight boarding and noise abatement.

There is a handful of unstriped parking spaces on site (at the rear of the building) which should be sufficient for the 3 employees of the proposed veterinary office. On street parking along Cahaba Road will be utilized by patrons, and is shared with other retail uses and Brick & Tin. Peak hours are anticipated in the early morning and late afternoon, which should be complimentary to the peak times of other uses on the same block of Cahaba Road.

2015-126

Location: 2921 Cahaba Road (formerly State Farm office - Chad Anderson)

Purpose: Outpatient Veterinary Care, Pet Grooming, Pet Bathing, Retail Sales (Food, Medications)

Hours of Operation: 7am-6pm M-F; 7am-12pm Sat

Busiest Time Period: 7am-9am, 4:30pm-6pm M-F

# Employee Working at 1 time: 3

Parking: Designated Parking in Rear of Building, Shared Street parking in Front of Building

Clients will be seen on an appointment basis, but walk-ins will be welcome. Appointment slots will be available at 30 minute intervals with no double booking (emergencies excluded). 10-20 patients per day is anticipated.

No overnight boarding or hospitalization will not be done at this facility, therefore excessive noise and odor should be dramatically reduced. In rooms where pets will be hospitalized for the day, insulation will be provided for noise reduction.

Grass area behind building can be used to walk pets with immediate clean up provided.

Garbage and Waste to be bagged and sealed; small dumpster in rear of building may be needed. Waste can be transported to Liberty Animal Hospital's dumpster if needed.

The zoning ordinance requires council approval of a veterinary/grooming use as follows:

"Section 129-192. Veterinary clinics/pet grooming, provided that there be no outdoor runs, and that business be conducted wholly within a building; no overnight boarding. Conditional review and approval shall ensure that sufficient areas for loading and unloading animals be provided, that appropriate measures be employed to minimize noise, odors, waste or other negative impacts incidental to operation of the business, and that the proposed use is compatible with the surrounding commercial and residential uses."

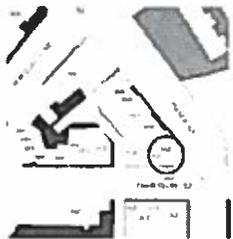


CITY OF MOUNTAIN BROOK

Dana G. Hazen, AICP  
Director of Planning, Building & Sustainability  
56 Church Street  
Mountain Brook, Alabama 35213-0009  
Telephone: 205/802-3821  
Fax: 205/879-6913  
hazen@mtbrook.org  
www.mtbrook.org

DATE: September 9, 2015  
TO: Mayor, City Council, and City Manager  
FROM: Dana Hazen, City Planner  
RE: 2822 Petticoat Lane, Mountain Brook Village (previous Linda Dobbins Dance)  
Conditional Use – Melanie Pounds Interior Design

Melanie Pounds is seeking to relocate her interior design business from Cahaba Road to Petticoat Lane (both in MB Village). The number of employees during a peak hour is 3, and those employees will park in the employee parking on the perimeter of the village. See attached letter of operational characteristics from the applicant.



The zoning ordinance requires council approval of office/service uses as a conditional use, and states that any proposed conditional use will be reviewed as to the following:

- Whether the use would disparately impact public parking in the area;
- Whether vehicular or pedestrian circulation would be impacted by the use;
- Whether the use is compatible with surrounding existing uses;
- Whether the hours of operation or peak traffic times would impact existing uses.

2015-128

To The Board of Design:

*Melanie Pounds*  
This is a Letter of Operations for Melanie Pounds Interior Design and Patricia Boutique. We hope to open the second week of November and offer a full range of Interior Design and Retail Services, including at 2822 Petticoat Lane in Mountain Brook Village.

Melanie Pounds Interior Design is an ASID accredited design firm with twelve years of working experience and a full design team. We formulate preliminary plans and design concepts based on the client's needs, goals, and requirements, to develop space plans, furniture arrangements, selections of finishes, fabrics, and hardware.

Patricia Boutique concentrates on custom order and one-of-a-kind found item home goods. Our Retail Services work with local designers, high end and world renowned vendors. This brings the opportunity to introduce various price points and new options in the end home furnishings to Mountain Brook Village. We will carry small quantities for the home and accessories. Our upholstery focus is a design line of case goods, beds, linens, bedding, and upholstered furniture by various Watershed brand furniture. This allows the customer to be knowledgeable about the vast number of custom options available with the brand. Making it useful and versatile enough for anyone's needs and design. We hope to grow with time and franchise. We are seeking the corner of Gentle Burg and Petticoat Lane. We have learned what Norman Johnson to get some ideas and look forward to proposing them to you all in the near future.

Sincerely,

Melanie Pounds

205.879.6913 • 205.802.3821  
www.mtbrook.org • www.mtbrook.org



**CITY OF MOUNTAIN BROOK**  
 P. O. Box 130009  
 Mountain Brook, Alabama 35213-0009  
 Telephone: 205.802.2400  
 www.mtnbrook.org

To: Sam Gaston, City Manager  
 From: Steven Boone  
 Date: September 11, 2015  
 C: Mayor and members of the City Council  
 Subject: Time and attendance

*S. Boone*

Currently, time and attendance functions are decentralized at the department level for efficiencies. Following is a summary of the current systems in place:

1. Fire and Police use a database system customized for their respective departments
2. Public Works utilizes a hand-punch clock and computerized time and attendance/leave balance maintenance system purchased from Gorrie-Regan
3. Parks and Recreation utilizes a card-punch clock with manual time calculations and manual leave balance maintenance
4. Library utilizes a manual time and attendance system and spreadsheet leave balance maintenance system
5. City Hall utilizes a combination of 1) computer clocking, 2) exception-based time and attendance reporting, and 3) leave balance maintenance is generally maintained in the City's payroll database program and manually in some instances

The Fire and Police system works well for their respective departments. The Public Works system also works well. To standardize the time and attendance functions across the rest of the City, I suggest implementing Gorrie-Regan's web-based time and attendance system across all departments except Fire and Police and replacing the card-punch system at Parks and Recreation and manual system at the Library with a hand-punch clock similar to the one utilized at Public Works. I also suggest upgrading the computer-punch system utilized at City Hall with an integrated computer-punch system and require all non-exempt personnel to utilize the clocking system.

The cost of implementing the system will be \$6,000 for the purchase of two clocks, \$1,000 installation costs, \$780 annual maintenance for the two clocks and \$3/employee/month for the web-based time and attendance system (estimated to be \$350/month). Time and attendance is complicated and implementing these systems and controls will better ensure the consistent application of time and attendance and leave balance policies throughout the City.

2015-129



2588 Newby Road, Suite 126  
 Huntsville, AL 35895



Project Location: 3678 East Street  
 Mountain Brook, AL 35243

To: City of Mountain Brook  
 3578 East Street  
 Mountain Brook, AL 35243

Attn: Steve Boone  
 Phone: 205-802-3425  
 E-mail: sboone@mtnbrook.org

Date: 8/18/2015

Proposed for: Move to AOD

Submitted by: Rich Shedd  
 Phone: (205) 423-2319  
 Email: rich.shedd@gorrieregan.com

Qty.	Description	Price Ea.	Est. Price
1	setup AOD, move database, train managers		
1	Webnet kit		
2	Handpunch clock	3,000.00	6,000.00
2	Maintenance for the handpunch clock	390.00	780.00

*This is to setup the web based software called Attendance on Demand (AOD). We will match as many of your current parameters as possible. However, since the program is used via the web, there will not be a thick client based on managers computers. Manager's will use the manager self service interface which which is updated from the thick client. Not all reports will remain the same so we need to review critical reports.*

*There is a one time setup fee of \$4,000 to cover the clock and labor. With AOD, you are billed monthly for active employees. This quote is based on 117 employees at \$3.00 per employee per month or \$351 monthly.*

*Since this is a hosted program, the server, server backup, server maintenance, server operating system upgrades, attendance software upgrades and software support are built into the monthly price.*

*This quote includes a webnet kit to convert your existing handpunch clock to "push" punches. Also included is one handpunch clock as the customer indicated a need of one to three clocks. Each clock is \$3,000.*

Monthly cost for 117 employees: **\$351.00**

Equipment Subtotal	6,780.00
Labor	1,000.00
<b>One time up front cost:</b>	<b>\$7,780.00</b>
Deposit Amount \$	4,390.00

\*Sales Tax, if applicable, must be included in final contract price

Quote Acceptance

Lessee or Purchaser (check one)  Lessee  Purchaser

Extended Warranty Accepted  Yes  No

Signed: *Regina D. [Signature]* **Clocks**

Date: *9/14/2015*

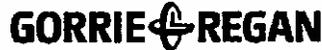
Title: \_\_\_\_\_

Buyer PO#: \_\_\_\_\_

Gorrie-Regan & Associates, Inc.  
 Phone: (205) 871-7395 | Toll Free: (800) 223-2277 | Fax: (205) 865-8880 | http://www.gorrieregan.com

Service Center

Exhibit A:  
Attendance on Demand  
Order Form



PO Number:
PO Date:
Monthly Billing Date:

Customer Name: City of Mountain Brook  
 Address: 56 Church Street  
 City, State, Zip: Mountain Brook, AL 35213  
 Preferred Customer Name for the URL\*: CityOfMountainBrook  
 \*CityOfMountainBrook appears as https://www.cityofmountainbrook.com no special characters (URLS) can be used in the URL.

Software Services	Unit Type	QTY	Per Unit Price	Monthly Fee
<input checked="" type="checkbox"/> Basic Service	Active Employees	117	\$3.00	\$351
<input checked="" type="checkbox"/> Additional User Accounts (includes 5 user accounts)	Active User	10	0	0
<input type="checkbox"/> Online Historical Data (over 3 years) Per active and inactive employee per month per year	Active & Inactive Employee			
<input checked="" type="checkbox"/> Employee Self Service/Leave Management	Active Employees	117	0	0
<input type="checkbox"/> Desk	Active Employees			
<input type="checkbox"/> Coverage Budgets	Active Employees			
<input type="checkbox"/> Accounts	Active Employees			
<input type="checkbox"/> Points Incidents	Active Employees			

\*Charges based on highest employee & lower counts for the month

Non Rental Clocks/Time Resources	Unit Type	QTY	Per Unit Price	Monthly Fee
<input type="checkbox"/> Bandwidth & Computing Service Fee	Per Clock			
<input type="checkbox"/> 3 <sup>rd</sup> Party Communications (WCM)	Per Database			

Hardware Rental**	Unit Type	QTY	Per Unit Price	Monthly Fee
<input type="checkbox"/>	Terminal			
<input type="checkbox"/>	Terminal			

Service Center is authorized to manage Hardware relationship with ACD as Channel Partner's behalf.

\*\*Shipping Information Form\*\* must be submitted with all hardware rental orders

Additional Services	Unit Type	QTY	Per Unit Price	Charge
<input checked="" type="checkbox"/> 7 Workgroup Levels				
<input type="checkbox"/>				

Service Center is authorized to receive payment for the above Additional Services (Manager Training, Implementation, Core Training)

Total Monthly 6351  
Total Additional Services

Functional/Personnel Contact	Contact Name	Work Email Address	Phone Number
	Steven Beane	soanes@mtmbrbrook.org	205-802-3625
	Amy Stephens	astephens@mtmbrbrook.org	205-802-3622
	Steve O'Dell	odells@mtmbrbrook.org	205-802-3620

SC\_AOD Attendance On Demand, Inc. | 25298 Commerce Dr., Suite 100 | Farmington Hills, MI 48335  
 Phone: 248.470.0800 | Fax: 248.688.6888 | www.attendanceondemand.com  
 Email orders to: service@attendanceondemand.com | support@attendanceondemand.com

CUSTOMER AGREEMENT

This Agreement is effective on the date of Exhibit A, among Gorrie-Regan and Associates, Inc., an Alabama corporation located at 2827 Central Ave., Birmingham, AL 35208 ("GORRIE"), Attendance on Demand, Inc., a Michigan corporation located at 25298 Commerce Drive, #100, Farmington Hills, MI 48335 ("AOD") and the Employer listed on Exhibit A ("Customer"). Collectively, GORRIE, AOD and Customer are referred to as the "Parties".

A. GORRIE sells access to Attendance on Demand, a time and attendance solution which includes online timekeeping job site and Customer account and billing information, all of which are provided at AOD's Virtual Web Site ("Web Site"). Collectively, GORRIE and AOD are referred to as "Service Providers"; and Customer, as employer, desires to outsource the services of the Web Site.

WHEREFORE, in consideration of the mutual promises in this Agreement, other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, Service Providers and Customer agree as follows:

- I. SERVICE PROVIDERS' RESPONSIBILITIES
  - A. **Services and Deliverables.** The various Time & Attendance functions and Human Resources Department functions selected by Customer are set forth on Exhibit A and, based on Customer's data, shall be provided to Customer ("Web Site Services") in accordance with this Agreement.
  - B. **Deliverables.** Service Providers shall perform all necessary steps to provide Customer with the Web Site Services ("WSS") during the term of this Agreement.
  - C. **Service Level Guarantees.** If Customer is unable to access the Web site for more than eleven (11) consecutive minutes during any twenty-four (24) hour period for reasons caused by AOD and Customer reports such outage to Service Providers within three (3) days after the outage, Service Providers shall credit Customer 100% of the monthly fee for the WSS. Only one credit will be given for outages occurring during any twenty-four (24) hour period. This Guarantee shall not apply in the event of Force Majeure (as described below), scheduled maintenance periods, or if Customer's account is not in good standing at the time of the outage.
  - D. **Limitations of Service.**
    1. Service Providers do not guarantee that Customer will be able to access the WSS at any particular time or during scheduled maintenance periods.
    2. Customer's use of the WSS and Internet use at Customer's site risk; Service Providers assume no responsibility for Customer's utilization of the Web site or the WSS.
    3. Compliance with all applicable international, national, state and local law and regulation is the sole responsibility of Customer.
    4. Service Providers do not guarantee the security of Customer's utilization of the Web site or the WSS. Although AOD has implemented state-of-the-art security features to protect the Customer's database, it does not warrant secure operation of the Web site or the WSS or that it will be able to prevent third party tampering.
    5. Customer acknowledges that anyone who has access to Customer's user identification and password can gain access to the Web site and WSS and agrees that it will maintain security practices standard to the industry in which it is engaged to protect access to the Web site and the WSS.
    6. Service Providers do not guarantee that there will be no transmission errors, disturbances, viruses, computers or security breaches of data transmitted to the Web site or to the data returned to the Customer.
- E. **Limit on Service Provider's Financial Responsibility.** Service Providers shall not be liable for the loss of or inaccuracies contained in data or interruption of service or breaches in security of data for any losses resulting from these events unless such events have been caused by Service Providers' gross negligence or willful misconduct. In no event shall AOD or GORRIE be responsible for any indirect, special, punitive, incidental or consequential damages, whether arising in contract or tort or from the negligence of AOD, even if AOD and/or GORRIE had been advised of the possibility that such damages could result from the occurrence of these events. In no event shall GORRIE or AOD be responsible for any indirect, special, punitive, incidental or consequential damages, whether arising in contract or tort or from the negligence of GORRIE, even if GORRIE and/or AOD had been advised of the possibility that such damages could result from the occurrence of these events. If, for whatever reason, AOD is unable to generate a particular payroll for Customer, Customer agrees that, as the fallback procedure, Customer shall request its usual payroll provider.
- F. **Agree.** AOD has appointed GORRIE as its authorized agent to sell WSS to the public, to provide Customer with contact and track information, to specify product options, to take Customer regarding how to properly utilize the Web site and to provide service and support to Customer as necessary. Customer shall pay for any and all charges in connection with the Agent's services. Subsequent to Customer obtaining initial access to the WSS, GORRIE shall make the following services available to the Customer at the rate schedule listed in Exhibit A: (i) training, integration, technical support and related services requested by Customer after obtaining initial access to the WSS; and (ii) lease of time clocks and software to Customer.

- I. FEES
  - A. **Consentation.** Customer agrees to pay to GORRIE the WSS Fees specified on Exhibit A (and listed on the Web site after the installation of the WSS at Customer's site) along with any other charges payable by Customer. Each amount is 102912\_061613\_SC\_AOD

see this monthly in advance on or before the first (1<sup>st</sup>) day of each month during the term of this Agreement. Customer's payment shall be made payable to GORRIE through wire transfer from Customer's bank account, by GORRIE bank account and in United States dollars. The fees and any additional charges payable under this Agreement are exclusive of any and all taxes, interest and penalties imposed thereon.

- B. **Life Payment.** If any EFT transaction is released or rejected, the Customer will be notified of same immediately by e-mail. GORRIE will rely the transaction once each day for the next ten (2) business days and assess a \$35.00 per day late fee for each day that EFT transaction fails. If payment is not received within ten (2) business days, the Customer's access to the Web site shall be terminated.
  - C. **Taxes.** Customer shall be responsible for payment of all taxes, duties, levies and any other fees incurred as a result of this Agreement, except for taxes on GORRIE's net income. Charges specified herein are exclusive of any such taxes, levies or fees.
- II. TERM AND TERMINATION
    - A. **Term.** This Agreement shall commence on the date specified in Exhibit A and terminate on the second anniversary of the Commencement Date ("Initial Term").
    - B. **Renewal.** At the end of the Initial Term, this Agreement will automatically renew on the first day of each consecutive calendar month thereafter unless one Party places the other Parties written notice of its intent to terminate this Agreement. This Agreement shall not expire if the Party desiring termination gives notice to the other Parties sixty (60) days prior to the expiration of the Initial Term.
    - C. **Termination for Cause.** Except as provided in Section 11.B. of this Agreement, any Party shall have the right to terminate this Agreement for material breach upon written notice describing the material breach and the date of the material breach. The breaching party will have thirty (30) days from receipt of notice to cure the material breach. If made breach is not cured, then the non-breaching party may immediately terminate this Agreement in writing.
    - D. **Effect of Termination.** On the date of termination, Customer shall pay all of its obligations through date of termination.
  - III. AOD'S WARRANTIES
    - A. **Web Site Location.** AOD represents and warrants that the Web Site is located at a secure hosting facility and that AOD will maintain this system for the term of this Agreement. This representation and warranty shall not apply unless Customer cannot access the Web Site through no fault of AOD.
    - B. **AOD Services Warranty.** AOD warrants that it will use reasonable care and skill to perform the WSS. AOD MAKES NO OTHER WARRANTY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE OR NETWORK TRANSPORT WILL BE UNINTERRUPTED OR ERROR-FREE.
    - C. **Service Provider Warranty.** GORRIE warrants that it will use reasonable care and skill to perform its services. GORRIE MAKES NO OTHER WARRANTY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE OR NETWORK TRANSPORT WILL BE UNINTERRUPTED OR ERROR-FREE.
  - IV. LIMITATIONS OF DAMAGES. Customer agrees that the WSS are provided "AS IS" and on an "AS AVAILABLE" basis.
    - A. AOD'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT IS LIMITED TO THE WARRANTY AND SERVICE LEVEL GUARANTEE SET FORTH IN SECTIONS 1 AND 4 ABOVE. IN NO EVENT SHALL AOD OR ANY OTHER PARTY INVOLVED IN PROVIDING SERVICES UNDER THIS AGREEMENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOSS OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE, OR INABILITY TO USE THE SERVICES, WHETHER ARISING IN CONTRACT OR IN TORT, OR RESULTING FROM THE FAULT OR NEGLIGENCE OF AOD, EVEN IF AOD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AOD DOES NOT MONITOR OR EXERCISE CONTROL OVER THE CONTENT OR THE INFORMATION TRANSMITTED THROUGH ITS SYSTEM. AOD MAKES NO WARRANTY REGARDING ANY PAYROLL OR HUMAN RELATIONS DEPARTMENT FUNCTIONS GENERATED THROUGH THE WEB SITE, AND CUSTOMER UNDERSTANDS AND AGREES THAT SUCH PAYROLLS ARE GENERATED ENTIRELY AT CUSTOMER'S OWN RISK. THE FOREGOING DISCLAIMER SHALL APPLY UNLESS OTHERWISE PROHIBITED BY LAW.
    - B. **Other Damages.** AOD does not warrant uninterrupted or error-free operation of any WSS or that AOD will correct all defects. In addition, AOD does not make any warranty as to the capacity or performance of the WSS.
    - C. **Force Majeure.** AOD will not be liable for delays, damages or failures in performance due to events of force majeure (events beyond its reasonable control, including, but not limited to, acts of governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, an inability to obtain necessary equipment or services, the severing of all-site communication lines by a third party, or other events of force majeure).
    - D. **Indemnification.** Customer agrees to indemnify and hold harmless AOD and

GORNE has all liability, loss, damages, claims, or causes of action, including reasonable legal fees and expenses that may be incurred, arising out of or related to the Customer's breach of any of the promises, representations or warranties contained in this Agreement.

**E. Limitation of Remedies.** Neither AOD nor GORNE shall be liable to Customer for any special, punitive, incidental, or consequential damages, whether the claim is in contract, tort (including negligence), or otherwise, and whether or not either AOD or GORNE has been advised of the possibility of such damage.

**VI. CUSTOMER'S RESPONSIBILITIES**

**A. In General.** In addition to Customer's obligations specified elsewhere in this Agreement, Customer shall be solely responsible for:

1. Selection of services, including the WSS, to achieve Customer's intended result and determining whether the Web site will meet Customer's performance needs.
2. The accuracy and content of any information provided by Customer to AOD and to fully cooperate with Service Providers.
3. Any loss of data, programs, breaches of security, viruses, and disabling or harmful device that Customer may download or otherwise experience as a result of Customer's use of the WSS.
4. Using the WSS in a manner consistent with any and all applicable international, federal, state and local laws and regulations.
5. Obtaining the necessary, licensing, service and support necessary from Agent to utilize the Web site properly.
6. Having properly functioning Internet Explorer software and an Internet connection with sufficient speed and available bandwidth to support payroll and supervisory activities.
7. Performing an act which would prevent Customer's equipment from communicating with AOD.
8. Returning leased equipment in the same condition the equipment was in when it was leased, reasonable wear and tear excepted. In addition, Customer shall be responsible for replacement of leased equipment that is damaged, lost or stolen.

**B. Service Support.** Customer performance of the responsibilities identified in subsection A above shall be at its sole cost. Service Provider's obligations under this Agreement are contingent on Customer performing the responsibilities identified in subsection A above.

**C. Information.** All information provided to Service Providers shall be complete and accurate. If any Customer information changes or is supplemented after the execution of this Agreement, Customer agrees to provide the changes in or supplements to GORNE within (15) days. If any additional Customer information is required by Service Providers, Customer agrees to provide such information within (15) days after the request for same.

**D. SERVICE PROVIDERS REQUIREMENT THAT THE DATA THAT THE CUSTOMER OWNS TO SERVICE PROVIDERS NOT INCLUDE EMPLOYEE SOCIAL SECURITY NUMBERS OR OTHER CARE EMPLOYERS PERSONAL DATA. CUSTOMER AGREES THAT IF PERSONAL DATA IS INCLUDED IN THE DATA OWNS TO SERVICE PROVIDERS IT SHALL BE DISCLOSED AT THE CUSTOMER'S SOLE RISK. IF THE PERSONAL DATA IS COMPROMISED IN SUCH A WAY THAT ONE OR MORE EMPLOYERS ARE HARMED, THE CUSTOMER AGREES THAT IT SHALL INDEMNIFY SERVICE PROVIDERS FOR ANY AND ALL DAMAGES THEY SUFFER INCLUDING REASONABLE ATTORNEY FEES AND LEGAL COSTS AS A RESULT OF THE PERSONAL DATA BEING COMPROMISED.**

**VII. OWNERSHIP OF CODE, CUSTOMER INFORMATION AND PATENTS.** The Parties acknowledge and agree that AOD has previously developed source and object code for purposes of creating an operational Web site (collectively, the "Source Code"); that the Source Code is owned exclusively by AOD; and that the Parties have no intention to convey any rights or licenses of the Source Code to Customer based upon this Agreement. Furthermore, there is no agreement for AOD to provide a license or permission to Customer for any software. All software, documentation, computer programs, inventions (whether or not patented), patents, trade secrets, service marks, and all other intellectual property, including all trademark rights in their entire patent, copyright, trade secret, or other property right, created or developed by AOD while providing services (collectively, "Work Product") is owned by AOD. Work Product shall not include Customer's Confidential Information (defined below). Customer shall not use in any manner any patents, trademarks, logos, or service marks ("Marks") relating to software or hardware purchased hereunder. Further, Customer shall not, under any circumstances, acquire any property interest in any Marks or in its goodwill associated therewith. Customer shall do nothing to injure, impair, or lessen the validity of the Marks. Customer agrees to protect, defend, maintain and save AOD harmless from any and all expenses, attorney's fees, claims, demands, or causes of action arising out of any claim of patent infringement arising out of the Customer's improper use of the Marks.

**VIII. CONFIDENTIAL INFORMATION.** AOD shall use reasonable care and discretion to prevent disclosure, publication, or dissemination of Customer's Confidential Information (defined below) to anyone other than GORNE, and shall not use, reproduce, disseminate, or otherwise disclose the Customer's Confidential Information, except, as necessary, to GORNE, in connection with the performance of its obligations under this Agreement. All CUSTOMER's time and attendance data will remain property of AOD. It is the CUSTOMER'S responsibility

to update records relating to his time and attendance account. Neither AOD nor GORNE is or will be the CUSTOMER'S official record keeper. GORNE acknowledges that during the term of this Agreement, Customer may disclose to GORNE confidential and proprietary information concerning Customer's business and operations. GORNE agrees that it will not use, reproduce, disclose, disseminate, or otherwise disseminate such confidential and proprietary information during the term of this Agreement or any time thereafter without the express written consent of Customer, except as is necessary to effectuate the terms of this Agreement. The foregoing provisions shall not apply to: (1) any information known to AOD or GORNE or any of their employees, officers or shareholders prior to the execution of this Agreement; (2) any information which is or becomes generally available in the industry or the public through no breach of this Agreement; or (3) any information disclosed to AOD or GORNE or any of its employees, officers or shareholders by a source other than Customer which is lawfully entitled to disclose such information. As used in this Agreement, "Customer's Confidential Information" means any and all data and information relating to the business and employees of the Customer of which AOD becomes aware as a consequence of, or through, this Agreement.

**IX. INDEMNIFICATION FOR THIRD PARTY CLAIMS**

**A. Indemnification by AOD.** If a third party claims or threatens a claim that the material AOD uses in connection with providing services to Customer infringe on that party's patent, trademark, copyright or trade secret, then AOD will indemnify, defend and hold harmless the Customer and its respective employees, officers, agents and directors against such claim or threatened claim of AOD's expense and will pay all costs, damages and reasonable attorney's fees that a court of competent jurisdiction awards in connection with that claim (for which AOD agrees in a final settlement) provided that Customer: (1) promptly notifies AOD of the claim or threatened claim; (2) permits AOD to control and cooperate with AOD in the defense of any claim or related settlement negotiations; and (3) obtains the consent of AOD prior to bringing any suit, damage or attorney fee for which it seeks reimbursement from AOD.

**B. Indemnification by Customer.** If a third party claims or threatens a claim that is using the Web site the Customer has violated a patent, trade or copyright, then Customer will indemnify, defend and hold harmless AOD and its respective employees, officers, agents and directors against such claim or threatened claim of Customer's expense and will pay all costs, damages and reasonable attorney's fees that a court of competent jurisdiction awards in connection with that claim for which Customer agrees in a final settlement) provided that AOD: (1) promptly notifies Customer of the claim or threatened claim; (2) permits Customer to control and cooperate with Customer in the defense of any claim and related settlement negotiations; and (3) obtains the consent of Customer prior to bringing any suit, damage or attorney fee for which it will seek reimbursement from Customer, which consent that not be unreasonably withheld.

**X. LIMITATION OF LIABILITY.** Circumstances may arise where, because of a defect by AOD, Customer is entitled to recover damages from AOD. Regardless of the basis or which Customer is entitled to claim damages from AOD, whether under contract law, tort law or equity, AOD shall be liable for payment of the lesser of (1) the amount of any actual direct damage or (2) \$10,000. Circumstances may also arise where, because of a defect by GORNE, Customer is entitled to recover damages from GORNE. Regardless of the basis on which Customer is entitled to claim damages from GORNE, whether under contract law, tort law or equity, GORNE shall be liable for payment of the lesser of (1) the amount of any actual direct damage or (2) \$10,000.

**XI. MISCELLANEOUS**

**A. Assignment.** This Agreement may be modified only by written Agreement signed by all the Parties that expressly sets forth the intent to modify this Agreement.

**B. Applicable Law, Jurisdiction and Attorney Fees.** This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan without reference to its conflicts of law provisions. Any dispute which may arise between the parties concerning this Agreement shall be determined by the courts of the State of Michigan and the parties hereby opt to the exclusive jurisdiction of the courts of the State of Michigan for such purpose. Should any Party necessarily which caused for the purpose of preserving, determining, enforcing, or preventing the breach of any rights under this Agreement through judicial action the prevailing Party (whether at trial or on appeal) shall be entitled to be reimbursed by the losing Party for all costs and expenses incurred thereby, including, but not limited to, all attorney fees and costs actually incurred for the services rendered to the prevailing Party. Further, the prevailing Party shall be entitled to additional awards of attorney fees for services not reasonably rendered in aid of enforcing the judgment or award or in collecting any amounts awarded.

**C. Agreement, Successors and Parties In Interest.** Except as otherwise provided within this Agreement, Customer may not transfer or assign this Agreement or any rights under it without the prior written consent of AOD, which shall not be unreasonably withheld, denied or delayed. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and permissible assigns. Nothing in this Agreement shall be construed to be to the benefit of any third party nor is it intended that any provision shall be for the benefit of any third party.

**D. Captions, Headings, Divisions, Paragraphs.** The headings and captions in this

Agreement are included as a matter of convenience and shall not be construed as a substantive part of this Agreement. All provisions and any reference of them shall be deemed to refer to the masculine, feminine, male, singular, or plural, as the identity of the person or persons may require in the context of the Agreement. No provision of this Agreement is to be interpreted for or against any Party because that Party or its legal representatives drafted the provision.

**E. Commencement of Time, Order and Time of the Essence.** In computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or legal holiday. In that case, the period will begin to run on the next day that is not a Saturday, Sunday, or legal holiday, and the period shall run until the end of the next day thereafter that is not a Saturday, Sunday, or legal holiday. No substantial, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or waive the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party in exclusion of any other right, power or remedy available to that party and such such right, power or remedy shall be cumulative. With respect to the Parties' performance of their obligations under this Agreement, time is expressly made of the essence.

**F. Counterparts and Multiple Executions.** This document may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement, even though all the Parties are not signatories to the original or all the same counterparts. A facsimile signature shall be deemed an original.

**G. Exhibits Further Acted.** The Exhibits referred to in this Agreement shall be incorporated by this reference into this Agreement whether or not they are attached.

**H. General Understanding, Good Faith, Cooperation, and Due Diligence.** Each Party represents that, in entering into this Agreement, (1) each Party has read and understands this Agreement, and is relying on the advice of the Party's own legal counsel; (2) this Agreement is being made without reliance upon any statement or representation not contained or referenced in this Agreement; and (3) no promise, inducement, or agreement not expressed in this Agreement has been made to any of the Parties. Each Party covenants, warrants, and represents to each other Party that he will act in good faith, act with due diligence, and provide his complete cooperation in carrying out the purposes and intent of the Agreement. Said purposes and covenants are mutual and dependent.

**I. Notice.** Notice under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, notice shall be deemed effective 72 hours after mailing or registered or certified mail, postage prepaid, directed to the Party at the address set forth in Exhibit A or in the opening Paragraph of this Agreement or such other address as a Party may indicate by written notice to the other Parties.

**J. Authority.** Each of the Parties represents and warrants to the other that it has the full right, power, and authority to enter into this Agreement and to perform all of its obligations in accordance with its provisions; and that neither the execution nor the delivery of this Agreement by it, nor the performance of any of its obligations under this Agreement, will result in the breach or violation of any provision that constitute a default under any law, contract, or other agreement or instrument to which it is a party or under which it has any rights or obligations.

**K. Severability, Waiver and Survival.** If any provision of this Agreement or its application is held to be invalid, void, or illegal, that provision shall be severed and the remainder of this Agreement shall not be affected. Such a finding shall in no way affect, limit, or invalidate any other provision of this Agreement, which shall remain in full force and effect. The covenants and agreements contained in Section II, E.D., V, VI, VII, D, X, K and 35 of this Agreement shall survive the termination (or any renewal) or breach of this Agreement.

**L. Waiver.** The waiver by either Party of the breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach.

**M. Entire Agreement.** This Agreement contains the entire understanding between the Parties pertaining to the subject matter of this Agreement and supersedes and replaces all prior or existing written and oral agreements, including contemporaneous agreements, between the Parties and their representatives pertaining to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers on the day and year indicated.

Garrie-Regan and Associates, Inc.  
 By \_\_\_\_\_  
 For itself and on behalf of AOD  
 Printed Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

City of Mountain Brook  
 Customer  
 By Lawrence T. Oden  
 Printed Name  
 Title Mayor  
 Date 9/14/2015

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**ADDENDUM TO AGREEMENT BETWEEN  
THE CITY OF MOUNTAIN BROOK AND  
GORRIE-REGAN AND ASSOCIATES, INC.  
DATED SEPTEMBER 14, 2015**

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Gorrie-Regan and Associates, Inc. ("the Contractor") dated September 14, 2015.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without express approval of the Mountain Brook City Council.

1. **Definitions.** For purposes of this Addendum, the terms below have the following meanings:
  - A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
  - B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
  - C. "The Contractor" refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors.
2. **Arbitration; Mediation; Alternate Dispute Resolution.** The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney's fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.
3. **Attorney's Fees; Court Costs; Litigation Expenses.** The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs,

and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. **Late Payment Charges; Fees; Interest.** The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. **Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.** The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.
6. **Choice of Law; Choice of Venue or Forum.** The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. **Construction of Addendum.** Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.
8. **Alabama Immigration Law Compliance Contract.** Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify

Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

DATED this 14th day of September, 2015.

Corrie-Regan and Associates, Inc.

City of Mountain Brook, Alabama

By: \_\_\_\_\_

By: *[Signature]*

Its: \_\_\_\_\_

Its: Mayor

**Old Leeds Road at Crosshill Road**

Skipper Consulting, Inc. performed observations of the traffic signal operation at the intersection of Old Leeds Road at Crosshill Road on Wednesday, August 19 and Thursday, August 20, 2015. Observations were conducted from 7:15 to 8:05 a.m. and 2:40 to 3:30 p.m. specifically, the observations were conducted to determine the potential need and benefit for modification of the traffic signal to allow for a protected green arrow for traffic turning left from Old Leeds Road southwest-bound onto Crosshill Road. The potential need for the addition of this protected left turn indication was evaluated based on the evaluation of two factors:

1. The delay experienced by vehicles turning left from Old Leeds Road onto Crosshill Road; and
2. The delay experienced by other drivers due to being stopped by a vehicle turning left from Old Leeds Road onto Crosshill Road.

In order to evaluate the delays described above, every queue was observed and four items of information recorded: 1) the time, 2) the total number of vehicles in the queue, 3) the number of left-turning vehicles in the queue, and 4) a subjective analysis of the delays as described above.

Queues are formed on Old Leeds Road southwest-bound due to two sources:

1. When the traffic signal gives a red indication when serving vehicles on Crosshill Road; and
2. When a vehicle is waiting to make a left turn from Old Leeds Road onto Crosshill Road.

**Morning Peak Period Observations**

During the morning observations, 50 queues were observed. Of these 50 queues, 15 queues were noted as having some level of delay associated with them. The following is a distribution of the subjective analysis of the delay experienced/caused by left turning vehicles:

No Delay	35
Little Delay	6
Some Delay	1
Moderate Delay	5
Severe Delay	3

**Afternoon Peak Period Observations**

During the afternoon observations, 27 queues were observed. Of these 27 queues, 3 queues were noted as having some level of delay associated with them. The following is a distribution of the subjective analysis of the delay experienced/caused by left turning vehicles:

No Delay	24
Little Delay	2
Some Delay	1
Moderate Delay	0
Heavy Delay	0

**Findings and Recommendations**

Based on the observations conducted and documented in this report, the following recommendations are offered to the City of Mountain Brook:

1. It appears that some benefit may be gained by modification of the traffic signal to allow a short protected green arrow for traffic turning left from Old Leeds Road southwest-bound onto Crosshill Road during the morning peak period of traffic flow only.
2. It does not appear that there would be any significant benefit gained by a protected green arrow at any other times of the day.
3. It is unclear if the addition of the protected green arrow during the morning peak period would have an adverse impact to traffic on other approaches to the intersection. A detailed traffic study should be performed.
4. The existing traffic signal is capable of being modified to accommodate the protected green arrow.
5. The existing traffic signal controller is capable of being programmed to only serve the protected green arrow at certain times of the day. If this were implemented, consideration should be given to installation of a special sign notifying motorists that the green arrow will come on only during these certain times of the day.
6. A generalized cost estimate to move forward with the project at this point is as follows:

Traffic Study	\$ 1,500
Traffic Signal Design	\$ 2,500
Special Controller Programming	\$ 1,000
Traffic Signal Construction	<u>\$ 7,500</u>
	\$12,500

2015-130

**PROFESSIONAL SERVICES AGREEMENT**  
Between  
The City of Mountain Brook and Skipper Consulting, Inc.

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 56 Church Street, Mountain Brook, Alabama 35213 and, Skipper Consulting, Inc ("Consultant"), doing business at 3844 Vann Road, Suite 100, Birmingham, Alabama 35236.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic signal modification design for the intersection of Old Leeds Road at Crosshill Road (the "Project" or "Services");

WHEREAS, the parties intend that the Consultant be authorized to start work on the services outlined in this agreement upon execution of this Agreement, and

WHEREAS, the Client and Consultant agree that the Services be performed pursuant to the terms of this Agreement, together with the attached Exhibit A and the Addendum related hereto, which writings constitute the entire agreement between them relating to this assignment.

1. **PROFESSIONAL SERVICES:** The Consultant agrees to perform the following Services under this Agreement:

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

The Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the Project.

2. **CLIENT'S RESPONSIBILITIES:** Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in its files. The Consultant may rely on the information provided by the Client without verification.

The Client will designate a representative who shall have the authority to act on behalf of the Client for this project.

The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.

3. **COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) of \$5,000.00.

The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncontested amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or services other than those contemplated herein shall be performed without the written approval of the Client.

If for any reason, payment for uncontested amounts reflected on invoices is more than 30 days delinquent, the Consultant shall have the right to stop work on the assignment until such payment is made. The Consultant will not be liable for any delays to project schedules caused for such work stoppage.

4. **STANDARD TERMS AND CONDITIONS**

The Client shall have final right of review and approval of all plans and specifications that shall be delivered in connection with the performance of the Services; however review and approval shall not be withheld unreasonably.

The rights and obligations of the parties to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Either party may terminate this Agreement upon 10 days' written notice to the other party should the defaulting party substantially fail to perform any or its material responsibilities in the Agreement through no fault of the party desiring to terminate. In the event of termination of this Agreement, due to the fault of a person or party other than the Consultant, Consultant shall be paid for Services performed to termination date.

The Consultant agrees to furnish consulting services only related to the Project. Consultant shall be responsible for coordination of its work with that of Client.

This Agreement (including Exhibit A and the Addendum) shall constitute the entire agreement between the parties concerning the matters herein, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated into this Agreement.

Any modification or amendment of this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Neither party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the causes of such failure shall occur due to events beyond a party's reasonable control, include, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

Consultant shall secure and maintain such insurance as is reflected on the Addendum.

Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

Old Leeds Road at Crosshill Road  
Mountain Brook, Alabama

Professional Services Agreement

The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

The persons signing this Agreement warrant that they have the authority to sign on behalf of the Client and Consultant.

CLIENT: CITY OF MOUNTAIN BROOK, AL CONSULTANT: SKIPPER CONSULTING INC.

By: [Signature] By: [Signature]

Printed Name: Lawrence T. Oden Printed Name: pp

Title: [Signature] Title: President

Date: 14/2015 Date: 8/20/15

Old Leeds Road at Crosshill Road  
Mountain Brook, Alabama

Professional Services Agreement

EXHIBIT "A"  
SCOPE OF WORK

Traffic Study

The Consultant shall perform a traffic study for the intersection of Old Leeds Road at Crosshill Road. The study shall include conducting an intersection turning movement traffic count during the morning peak hour period. Analyses shall be performed to determine the traffic impacts of implementing a protected left turn arrow for the left turn from Old Leeds onto Crosshill Road. The results of the study will be delivered to the City in a memorandum.

Traffic Signal Design

The Consultant shall prepare a traffic signal modification design for the Intersection of Old Leeds Road at Crosshill Road. The scope of the modifications shall include modifications to the controller cabinet and signal displays to allow for the modification of the phasing scheme of the controller.

The following specific items are included in the scope of work:

- Prepare construction plans
- Prepare a cost estimate for construction
- Consult with a single contractor to determine if the proposed work will exceed \$50,000
- If the project will be under \$50,000, provide assistance and coordination necessary for the City to enter into an agreement for construction for the signal modifications
- If the project will be over \$50,000, work with the City to advertise for bids, evaluate bids, award a bid, and contract with the selected contractor
- Coordinate contractor work activities and inspect operation of the signal modifications

Special Controller Programming

The Consultant will program the new controller and fine-tune the programming based on field observations. The intention is that special programming will be used to allow the protected only arrow to operate only during certain times of the day.

Schedule

The Consultant shall perform the scope of work as documented in Exhibit "A", up to and including issuing of final plans for construction, within a period of four (4) calendar weeks following notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

Meetings

The Consultant shall attend as many meetings with the City of Mountain Brook as required to successfully complete the project.

**ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. – TRAFFIC ENGINEERING SERVICES (OLD LEEDS ROAD AT CROSSHILL ROAD)**

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT ("the/this Addendum") between the City of Mountain Brook, Alabama ("the City") and Skipper Consulting, Inc. ("the Contractor") is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties (the "Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without the express approval of the Mountain Brook City Council.

**1. Definitions.** For purposes of this Addendum, the terms below have the following meanings:

- A. **"The City"** refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."
- B. **"The (this) Agreement"** refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
- C. **"The Contractor"** refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

**2. Dispute Resolution.** If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a "Dispute"), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

**3. Attorney's Fees; Court Costs; Litigation Expenses.** The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

**4. Late Payment Charges; Fees; Interest.** The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

**5. Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.** The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

**6. Choice of Law; Choice of Venue or Forum.** The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the Agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.

**7. Construction of Addendum.** Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

**8. Independent Contractor.** Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

**9. Contractor's Insurance Requirements:** For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance with a company(ies) lawfully authorized to do business in the location of the Project and reasonably acceptable to the City:

- .1 **Comprehensive General Liability:** This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and

property damage with a combined single limit of not less than \$500,000 per occurrence.

2. Automobile Liability: If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

3. Workers Compensation: Workers' Compensation and Employers Liability as required by statute.

4. Professional Liability: If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less One Million Dollars (\$1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any Indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. *Indemnification for Claims by Third Parties.* The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.

11. *EXCLUSION OF CONSEQUENTIAL DAMAGES.* THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF

By:

Printed Name:

Title:

Date:

CONSULTING INC.

*U.B. Skipper Jr*

Ull B. Skipper

President

2015

Sam Gaston

From: Stefanie Davis  
Sent: Thursday, September 10, 2015 6:21 PM  
To: Sam Gaston  
Subject: Info for Council Meeting Monday 9/14

Hi Sam - Here is the info I would like to be included in the agenda packet for the meeting Monday night.

- (1) Larger safer sidewalks on South Brookwood leaving the Elementary School - I would love to see our kids have a safer sidewalk down South Brookwood by replacing what is there. Crestline & MBE were approved for new sidewalks through a grant called the Safer Route to School. BWP & Cherokee Bend were not approved for the grant & it is no longer available. I would love to see what we need to do to get the ball rolling on wider sidewalks and maybe guard rails of some sort. I feel like this could also help alleviate some of the car pool problems we have.
- (2) Crosswalk at S Brookwood & North Woodridge Intersection - lots of our kids walk to the circle after school and could keep coming further if they had a safe way to cross the street onto North Woodridge. There are lots of us adults who run/walk in the neighborhood & this would also help us when trying to cross.
- (3) Sidewalk completed on North Woodridge to Bethune - We would like to see the stretch of North Woodridge (where it stops at the bottom of the hill on North Woodridge and picks back up on Bethune) added to the list on the Master Sidewalk plan.
- (4) 4 way stop at North Woodridge & Spring Valley Ct.

I have 5 people who have committed to be in attendance of the meeting. I am working on the number of children we have in our neighborhood. The crosswalk will benefit everyone in the area.

Thanks so much and please let me know if I need any more information to have on hand.

Sincerely,  
Stefanie Davis

Stefanie Davis  
Rodan & Fields  
[www.stefaniedavis.mvrandf.com](http://www.stefaniedavis.mvrandf.com)  
205.541.6208

1

2015-132



**PROFESSIONAL SERVICES AGREEMENT**  
Between  
The City of Mountain Brook and Skipper Consulting, Inc.

This Agreement is made by and between the City of Mountain Brook, Alabama ("Client"), doing business at 58 Church Street, Mountain Brook, Alabama 36213 and, Skipper Consulting, Inc. ("Consultant"), doing business at 3644 Vann Road, Suite 100, Birmingham, Alabama 36236.

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic study for the Intersection of South Brookwood Road at North Woodridge Road (the "Project" or "Services");

WHEREAS, the parties intend that the Consultant be authorized to start work on the services outlined in this agreement upon execution of this Agreement, and

WHEREAS, the Client and Consultant agree that the Services be performed pursuant to the terms of this Agreement, together with the attached Exhibit A and the Addendum related hereto, which writings constitute the entire agreement between them relating to this assignment.

1. **PROFESSIONAL SERVICES:** The Consultant agrees to perform the following Services under this Agreement:

SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

The Consultant agrees to perform its Services in a manner that is consistent with professional skill and care that would be provided by other professionals in its industry under same or similar conditions, and in the orderly progress of the Project.

2. **CLIENT'S RESPONSIBILITIES:** Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in its files. The Consultant may rely on the information provided by the Client without verification.

The Client will designate a representative who shall have the authority to act on behalf of the Client for this project.

The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the scope of work within established schedules.

3. **COMPENSATION/ BILLING/ PAYMENT:** Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) of ~~\$2,500.00~~.

The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncontested amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed scope of services, the Consultant will submit a proposal for the additional work. No additional work or services other than those contemplated herein shall be performed without the written approval of the Client.

If for any reason, payment for uncontested amounts reflected on invoices is more than 30 days delinquent, the Consultant shall have the right to stop work on the assignment until such payment is made. The Consultant will not be liable for any delays to project schedules caused for such work stoppage.

4. **STANDARD TERMS AND CONDITIONS**

The Client shall have final right of review and approval of all plans and specifications that shall be delivered in connection with the performance of the Services; however, review and approval shall not be withheld unreasonably.

The rights and obligations of the parties to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Either party may terminate this Agreement upon 10 days' written notice to the other party should the defaulting party substantially fail to perform any or its material responsibilities in the Agreement through no fault of the party desiring to terminate. In the event of termination of this Agreement, due to the fault of a person or party other than the Consultant, Consultant shall be paid for Services performed to termination date.

The Consultant agrees to furnish consulting services only related to the Project. Consultant shall be responsible for coordination of its work with that of Client.

This Agreement (including Exhibit A and the Addendum) shall constitute the entire agreement between the parties concerning the matters herein, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated into this Agreement.

Any modification or amendment of this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Neither party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out from or resulting from, any failure to perform in accordance with its terms where the causes of such failure shall occur due to events beyond a party's reasonable control, include, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

Consultant shall secure and maintain such insurance as is reflected on the Addendum.

Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

South Brookwood Road at North Woodridge Road  
Mountain Brook, Alabama

Professional Services Agreement

The Client's reuse of any report, documents or other deliverables prepared by the Consultant for the Project on any other project without written verification by the Consultant shall be at the Client's risk.

The persons signing this Agreement warrant that they have the authority to sign on behalf of the Client and Consultant.

CLIENT: CITY OF MOUNTAIN BROOK, AL

CONSULTANT: SKIPPER CONSULTING INC.

By: *Lawrence T. Oden*

By: *Darrell B. Skipper*

Printed Name: Lawrence T. Oden

Printed Name: Darrell B. Skipper

Title: Mayor

Title: President

Date: 9/14/2015

Date: 9/14/15

South Brookwood Road at North Woodridge Road  
Mountain Brook, Alabama

Professional Services Agreement

**EXHIBIT "A"  
SCOPE OF WORK**

The Consultant shall perform a traffic study to determine the advisability for the installation of a pedestrian crosswalk crossing South Brookwood Road at North Woodridge Road. There is an existing sidewalk on the north side of North Woodridge Road and also on the west side of South Brookwood Road. Pedestrians must cross South Brookwood Road in an uncontrolled manner to transfer from one existing sidewalk to the other. The roadway geometry of South Brookwood Road in the vicinity of the intersection results in limited sight distance related to vehicles traveling northbound on South Brookwood Road due to horizontal and vertical curvature of the roadway. Therefore, a detailed traffic study needs to be performed to determine if it is advisable to mark a pedestrian crossing of South Brookwood Road at this intersection, or determine what conditions would be required to make a marked crossing advisable.

The following is the scope of work proposed for the project:

- Obtain and review the latest traffic count and speed study for South Brookwood Road recently performed by the Mountain Brook Police Department
- Obtain and review crash reports for the intersection from the Mountain Brook Police Department
- Perform a 24 hour machine traffic count on North Woodridge Road
- Perform a.m. and p.m. peak period intersection turning movement traffic count at the intersection of South Brookwood Road at North Woodridge Road
- Perform a.m. and p.m. peak period observations at the intersection of South Brookwood Road at North Woodridge Road
- Perform the following sight distance measurements:
  - Intersection sight distance for drivers exiting North Woodridge Road
  - Sight distance for pedestrians wishing to cross South Brookwood Road
  - Sight distance for drivers on South Brookwood Road approaching a pedestrian crossing of South Brookwood Road
- Compare sight distance measurements to industry standards
- Perform a warrant study and Intersection capacity analysis for installation of a multi-way stop at the Intersection of South Brookwood Road at North Woodridge Road
- Develop recommendations based on analysis and observations
- Document the results of the study in a report
- Attend as many meetings with the City of Mountain Brook as required to reach a conclusion regarding recommendations to be implemented

**Schedule**

The Consultant shall perform the scope of work as documented in Exhibit "A", up to and including issuing of report, within a period of three (3) calendar weeks following notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

**ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. - TRAFFIC ENGINEERING SERVICES (SOUTH BROOKWOOD ROAD AT NORTH WOODRIDGE ROAD)**

THIS ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT ("the/this Addendum") between the City of Mountain Brook, Alabama ("the City") and Skipper Consulting, Inc. ("the Contractor") is entered between the parties.

This Addendum is a part of the Professional Services Agreement between the parties (the "Agreement") concerning the work, services or project described in the Agreement. In the event of any conflict between the terms and provisions of this Addendum and the Agreement, the terms herein supersede and control any conflicting or inconsistent terms or provisions, particularly to the extent the conflicting or inconsistent terms or provisions in the Agreement purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The Addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal Agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without the express approval of the Mountain Brook City Council.

1. *Definitions.* For purposes of this Addendum, the terms below have the following meanings:

- A. "The City" refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the "Client."
- B. "The (this) Agreement" refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
- C. "The Contractor" refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor's vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the "Consultant."

2. *Dispute Resolution.* If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a "Dispute"), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution

mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.

3. *Attorney's Fees; Court Costs; Litigation Expenses.* The City shall not be liable for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. *Late Payment Charges; Fees; Interest.* The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services, and bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be considered delinquent pending resolution of the dispute.

5. *Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.* The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.

6. *Choice of Law; Choice of Venue or Forum.* The meaning, legal effect, and enforcement of terms and provisions of the Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the Agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.

7. *Construction of Addendum.* Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal Agreement or as a matter of law.

8. *Independent Contractor.* Consultant's relationship to Client at all times is that of an independent contractor. Consultant exclusively controls the means and methods in which it performs its operations or provides the goods, services or undertaking described in the Agreement. The Client does not reserve any right of control over Consultant's operations or the activities it utilizes to perform its obligations in the Agreement.

9. *Contractor's Insurance Requirements.* For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance with a company(ies) lawfully authorized to do business in the location of the Project and reasonably acceptable to the City:

1. **Comprehensive General Liability:** This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and property damage with a combined single limit of not less than \$500,000 per occurrence.

2. **Automobile Liability:** If the work or services performed by the Contractor involves use of motor vehicles on public streets, Automobile Liability covering owned and rented vehicles operated by Contractor with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit and aggregate for bodily injury and property damage, per occurrence.

3. **Workers Compensation:** Workers' Compensation and Employers Liability as required by statute.

4. **Professional Liability:** If Contractor is providing professional services, Professional Liability covering Contractor's negligent acts, errors and omissions in its performance of professional services with policy limits of not less One Million Dollars (\$1,000,000) per claim and in the aggregate.

Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. Those insurance requirements are in addition to and do not affect any indemnification obligation of Contractor herein.

All policies, except for the Workers Compensation and Professional Liability policies shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or its performance of Services or work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policy.

All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

Before commencement of Services hereunder, Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City.

10. **Indemnification for Claims by Third Parties.** The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the "indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by

the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.

11. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR'S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF MOUNTAIN BROOK	CONTRACTOR: SKIPPER CONSULTING INC.
By: <u><i>Lawrence F. Oden</i></u>	By: <u><i>Darrell B. Skipper</i></u>
Printed Name: <u>Lawrence F. Oden</u>	Printed Name: <u>Darrell B. Skipper</u>
Title: <u>Mayor</u>	Title: <u>President</u>
Date: <u>9/14/2015</u>	Date: <u>9/4/15</u>

**NORTH WOODRIDGE SIDEWALK EXTENSION FROM  
WESTBURY PLACE TO BETHUNE DRIVE**

2500 ft of sidewalk 5 ft wide 182 yds	\$ 23,380.00
2 Crosswalks stripped	\$ 4,000.00
ADA bricks for crosswalks	\$ 2,000.00
Tree removal x 2	\$ 3,000.00
Power pole relocation	\$ 4,000.00
Misc. columns and mailbox relocate	\$ 10,000.00
Landscaping	\$ 10,000.00
Forming materials	\$ 3,000.00
Misc. Materials	\$ 3,000.00
Water Meter Relocation	\$ 32,000.00
<b>Total :</b>	<b>\$ 94,380.00</b>

These prices are subject to change due changing prices of materials.

**SOUTH BROOKWOOD RD.  
SCHOOL SIDEWALK**

Install new guardrail along sidewalk : 1775 ft.	\$ 84,000.00
Sidewalk modifications :	\$ 20,000.00
<b>Total :</b>	<b>\$ 104,000.00</b>

These prices might change due to the rising cost of materials.

**Memorandum**

To: Lt. C. Clark  
 From: Sgt. J. Rhoads  
 Date: 9/10/15  
 Re: Traffic Count – North Woodridge Road near South Brookwood Road

Per your request, I conducted a traffic count on North Woodridge Road. Data was gathered concerning speed and volume. The following data was gathered:

	Southbound		Northbound		Total	
Vehicles counted	3,749		4,446		8,195	
Average speed	33 mph		32 mph		33 mph	
	#	%	#	%	#	%
60-25 mph	240	7	287	7	527	7
26-30 mph	579	16	1,153	26	1,732	21
31-35 mph	1,890	50	1,863	42	3,753	46
36-40 mph	904	24	951	21	1,855	23
41-45 mph	112	3	162	4	274	3
46-50 mph	18	0.5	23	0.5	41	0.5
51+ mph	6	0.2	7	0.2	13	0.2
Peak time	Morning & Afternoon commute		Morning & Afternoon commute		Morning & Afternoon commute	

Southbound traffic flows toward South Brookwood Road  
 Northbound traffic flows toward Spring Valley Ct.

Conclusion: This study began Thursday September 3<sup>rd</sup> and continued through Wednesday September 9<sup>th</sup>. Peak travel times for the weekdays included morning and afternoon commute hours. Traffic was also heavy during lunchtime. During the two weekend days, traffic volume was heavier around lunchtime and 6:00pm.

Note: Speed limit is 30 mph.

Cc: Chief T. Cook  
 Captain G. Hagood

ORDINANCE NO. 1938

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA, ADOPTING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2015 AND ENDING SEPTEMBER 30, 2016

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that the following is the adopted budget for all major funds of the City for the fiscal year beginning October 1, 2014 and ending September 30, 2016

	General Operations	Park Board	Library Board	Capital Projects	Other Governmental	All Other
<b>Funds Available:</b>						
<b>Revenues:</b>						
Taxes						
Licenses and permits	4,588,700	0	0	0	0	0
Intergovernmental	0	49,500	0	0	0	46,714
Charges for services	549,100	81,200	9,000	0	388,000	130,948
Fines and forfeitures	515,000	0	58,000	0	197,100	0
Grants	0	0	11,138	1,043,000	0	0
Investment Earnings	96,000	500	370	29,200	4,440	8,200
Miscellaneous	264,000	1,000	1,500	25,000	1,500	0
Proceeds from the issuance of debt	0	0	0	0	0	0
Proceeds from the sale of property	0	0	0	0	0	0
Interfund transfers in:						
General Operations/Capital	0	0	0	3,735,342	990,973	0
Park Board	0	0	0	147,000	0	0
Library Board	0	0	0	102,000	0	0
Other (14X/153)	38,517	0	0	0	0	0
E-911	0	0	0	0	0	0
Operating transfers in-component unit	0	0	25,000	0	0	0
Donations	0	0	81,400	0	0	0
(Surplus)	(176,454)	0	0	0	1,509,666	(11,199)
<b>Total Fund Available</b>	<b>7,7</b>	<b>3,0</b>	<b>2,2</b>	<b>5,0</b>		
<b>Expenditures:</b>						
Legislation and management			5			
Planning, Building & Sustainability	7					
Intergovernmental	7					
Unassigned benefits	754,000	0	0	0	0	0
Finance	1,296,629	0	0	132,520	269,193	0
Fire	7,098,188	0	0	1,232,930	0	0
Inspection Services	430,945	0	0	72,000	0	0
Police	7,169,591	0	0	773,681	435,185	0
Street and Sanitation	6,561,407	0	0	5,933,959	1,200,640	0
Parks and Recreation	0	1,131,602	0	373,130	0	138,646
Library	0	0	3,160,345	75,000	0	0
Debt service payments	0	0	0	0	3,746,641	0
Operating transfers out						
General Fund	0	0	0	0	0	38,517
Capital Projects	3,984,342	0	0	0	0	0
Special Revenue	399,287	0	0	0	0	0
Debt Service (Other)	300,000	0	0	291,641	0	0
Other funds (Other)	25,000	0	0	0	0	(25,000)
Park Board	997,402	(997,402)	0	0	0	0
Library Board	7,938,627	0	(7,938,627)	0	0	0
<b>Total Expenditures</b>	<b>\$ 34,796,763</b>	<b>\$ 134,200</b>	<b>\$ 207,298</b>	<b>\$ 10,148,903</b>	<b>\$ 9,631,629</b>	<b>\$ 152,163</b>

1938

BE IT FURTHER ORDAINED by the City Council of the City of Mountain Brook, Alabama that the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to disburse funds for the payment of budgeted expenditures including and not limited to salaries and benefits, payroll taxes, service and other contracts, debt service, utilities, supplies and such other obligations incurred by the City in the normal course of municipal, public safety, and recreational operations.

ADOPTED: The 14th of September, 2015.

*Vijay C. Sult*  
Council President

APPROVED: The 14th of September, 2015.

*Paul Clark*  
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook at its meeting held on September 14, 2015, as same appears in the minutes of record of said meeting, and published by posting copies thereon on September 15, 2015, at the following public places as required by law.

City Hall, 56 Church Street  
Glickrist Pharmacy, 2850 Cahaba Road

Ovenon Park, 3030 Ovenon Road  
The Invitation Place, 3150 Ovenon Road

*Steven Boone*  
City Clerk

# Mountain Brook City Government

## Mission Statement

A professional organization committed to teamwork and excellence which promotes full participation in enhancing the quality of life for its residents.

### Values

- Integrity
- Safety
- Education
- Community
- Stewardship
- Beauty

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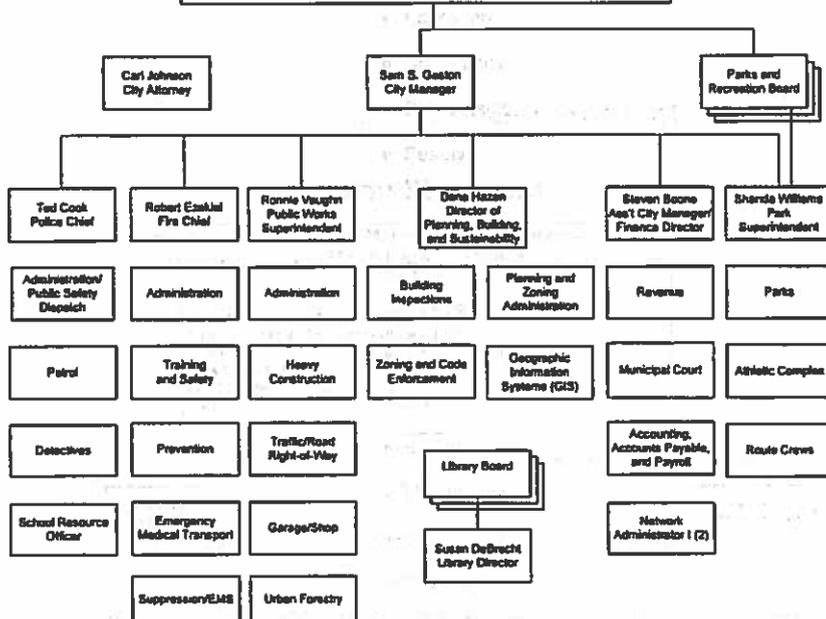
### Values

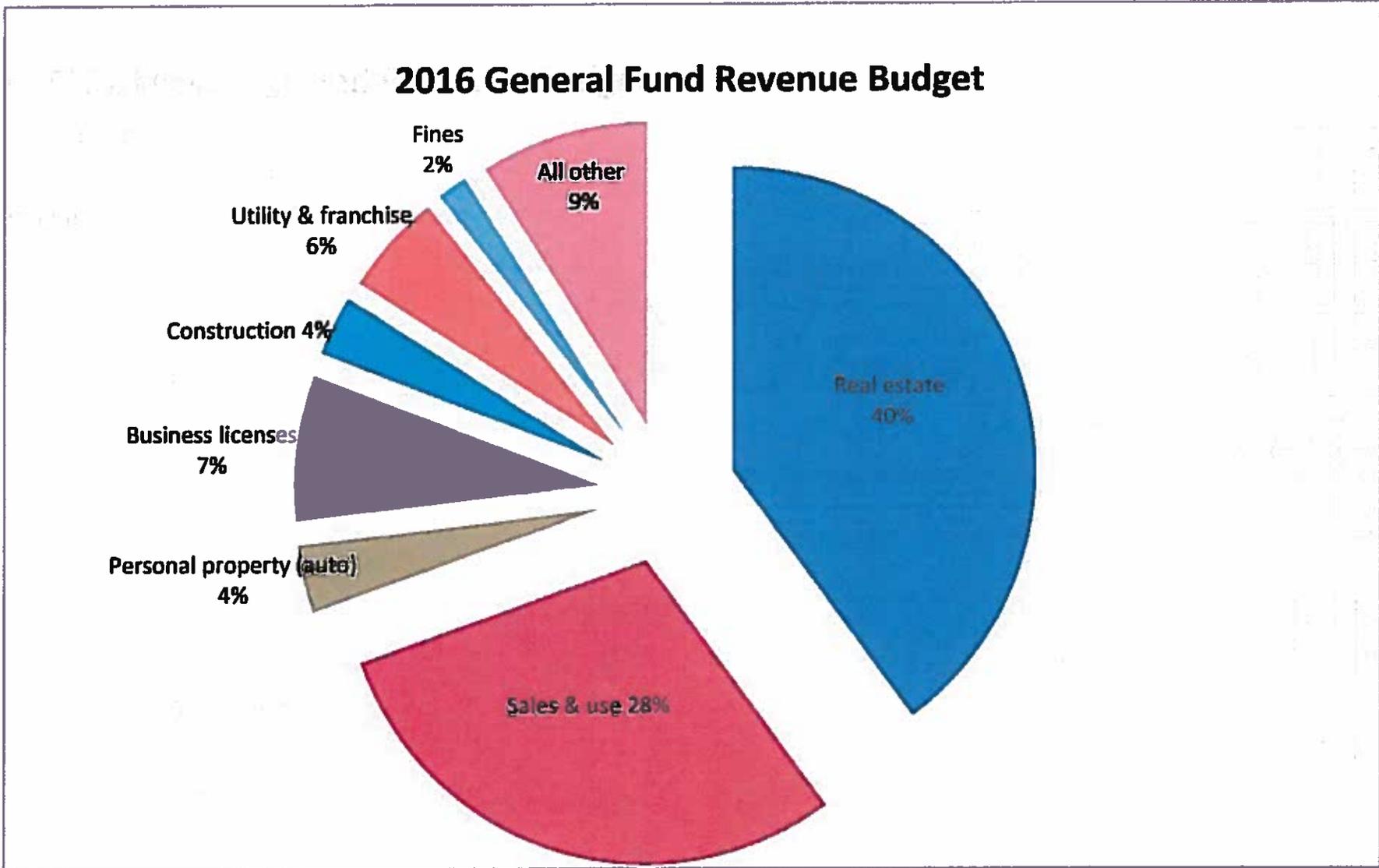
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## Mission Statement

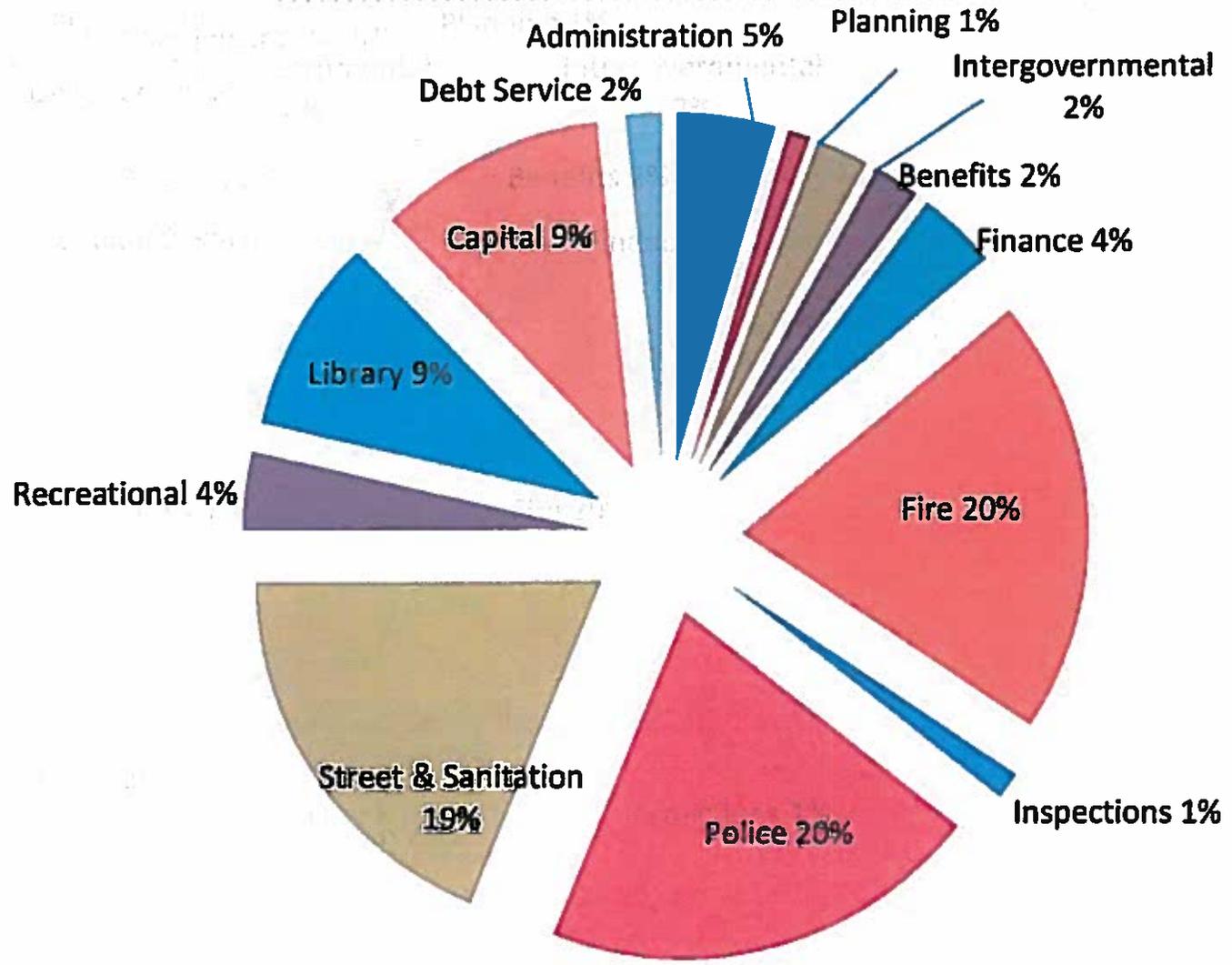
**The City of Mountain Brook, Alabama**  
**Mayor and City Council**  
**(2014 - 2016)**

Lawrence T. Oden, Mayor (2016)  
 Virginia C. Smith, President - Place 4 (2016)  
 William S. (Billy) Pritchard, III, President Pro Tempore - Place 3 (2016)  
 Jack D. Carl - Place 2 (2016)  
 Lloyd C. Shelton - Place 5 (2016)  
 Alice B. Womack - Place 1 (2016)



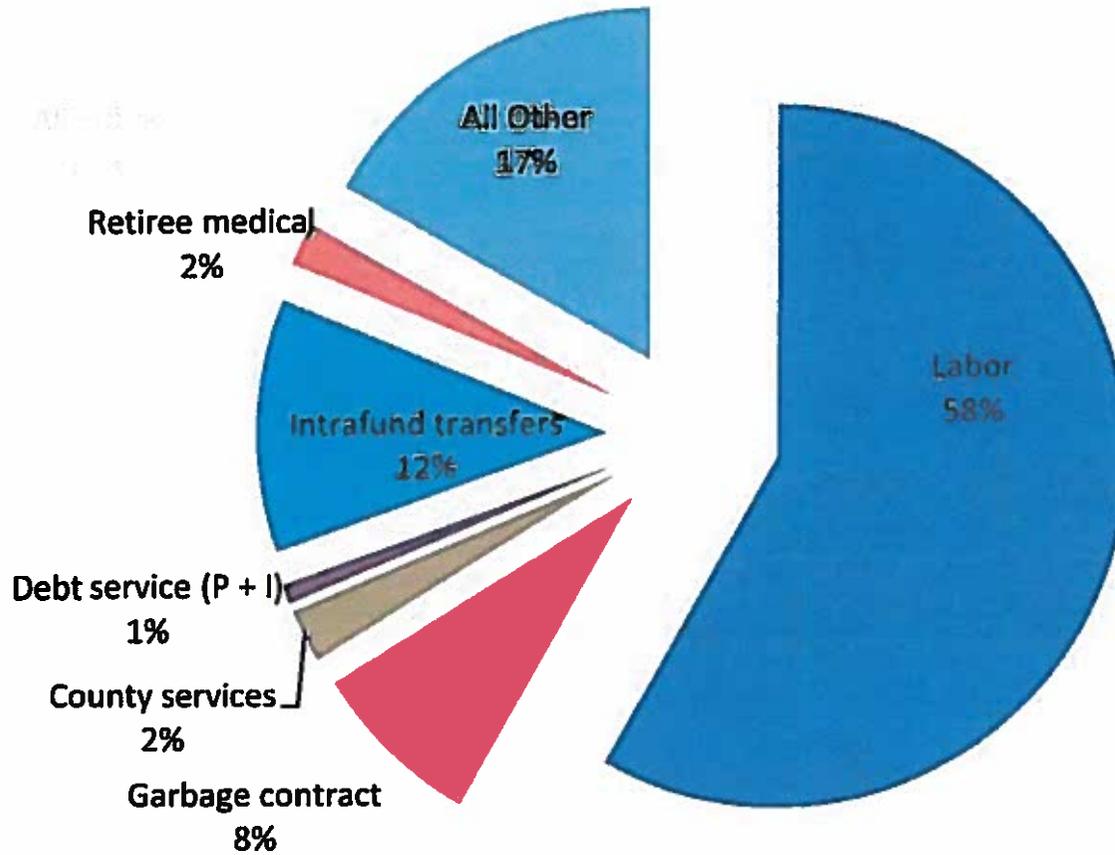


### 2016 General Fund Expense Budget



APPENDIX 6

## 2016 General Fund Expense Budget



Statement of Budgeted Revenues, Expenditures, and Changes in Fund Balance (Financial Statements)  
 City of Mountain Brook, Alabama  
 Year Ended

	2016				Total Governmental Funds		
	General Fund	Capital Projects	Debt Service	Other Governmental Funds	Budget 2016	Budget 2015	Actual 2014
	1XX, 7XX	4XX	6XX	8XX			
<b>Revenues:</b>							
Taxes	\$ 29,472,000	\$ 0	\$ 0	\$ 391,300	\$ 29,863,300	\$ 28,113,600	\$ 28,234,123
Licenses and permits	4,588,700	0	0	0	4,588,700	4,473,300	4,528,418
Intergovernmental	95,714	0	0	0	95,714	96,233	85,443
Charges for services	770,248	0	0	388,000	1,158,248	1,052,288	1,180,851
Fines and forfeitures	573,000	0	0	182,100	755,100	747,300	783,687
Grants	11,138	1,043,000	0	0	1,054,138	687,188	858,128
Investment Earnings	104,970	29,200	1,000	3,440	138,610	220,375	335,897
Miscellaneous	288,500	25,000	0	175,000	488,500	485,500	454,794
<b>Total Revenues</b>	<b>33,894,278</b>	<b>1,097,200</b>	<b>1,000</b>	<b>1,149,840</b>	<b>36,132,318</b>	<b>35,871,840</b>	<b>38,519,340</b>
<b>Expenditures:</b>							
General government	4,872,582	1,358,520	800	268,783	6,498,275	4,738,563	5,548,720
Public safety	14,598,728	2,098,833	0	436,185	17,133,544	16,488,432	14,713,537
Street & sanitation	8,581,402	5,953,958	0	1,200,810	13,715,971	12,840,235	8,688,243
Recreational	1,270,248	373,150	0	0	1,643,398	1,678,258	1,500,465
Library	3,160,345	73,000	0	0	3,233,345	3,200,708	2,913,728
Debt service	0	0	3,748,441	0	3,748,441	3,747,350	3,697,761
<b>Total Expenditures</b>	<b>30,983,283</b>	<b>9,857,283</b>	<b>3,748,441</b>	<b>1,684,168</b>	<b>46,672,174</b>	<b>39,201,584</b>	<b>33,648,882</b>
<b>Excess (deficiency) of revenues over expenditures</b>	<b>3,320,997</b>	<b>(8,760,083)</b>	<b>(3,748,441)</b>	<b>(784,348)</b>	<b>(7,839,884)</b>	<b>(3,429,744)</b>	<b>2,673,298</b>
<b>Other Financing Sources (Uses):</b>							
Proceeds from the issuance of debt	0	0	0	0	0	0	0
Operating transfers in	0	3,984,342	581,841	399,282	4,975,265	(4,830,878)	5,717,050
Operating transfers (out)	(4,683,624)	(291,841)	0	0	(4,975,265)	(4,830,878)	(5,717,050)
Operating transfers in-component unit	25,000	0	0	0	25,000	25,000	4,477
Donations	81,400	0	0	0	81,400	76,990	144,572
<b>Total Other Financing Sources</b>	<b>(4,577,224)</b>	<b>3,692,501</b>	<b>581,841</b>	<b>399,282</b>	<b>188,400</b>	<b>181,890</b>	<b>148,049</b>
<b>Excess (Deficiency) of Revenue and Other Financing Sources Over Expenditures and other Financing Uses</b>	<b>743,773</b>	<b>(5,067,582)</b>	<b>(3,166,600)</b>	<b>(385,066)</b>	<b>(7,651,484)</b>	<b>(3,227,794)</b>	<b>3,022,367</b>
<b>FUND BALANCES, END OF YEAR</b>	<b>\$ 14,588,978</b>	<b>\$ 8,829,388</b>	<b>\$ 897,387</b>	<b>\$ 777,840</b>	<b>\$ 24,787,583</b>	<b>\$ 27,251,388</b>	<b>\$ 36,638,178</b>

General Operations (Fund 100) Budget Summary  
 City of Mountain Brook, Alabama  
 Year Ended

	Actual 2014	Budget 2015	Projected 2016	Budget 2016
<b>Revenues</b>	<b>\$ 33,842,782</b>	<b>\$ 33,834,500</b>	<b>\$ 34,503,031</b>	<b>\$ 35,484,808</b>
<b>Expenses and Intrafund Transfers:</b>				
General Government	12,018,198	10,908,813	11,543,968	11,882,094
Legislation & Management	2,433,283	1,802,889	2,353,334	2,018,345
Planning	0	201,148	185,833	365,714
Intergovernmental	803,703	815,500	827,343	860,674
Benefits (Unassigned)	782,744	647,700	752,880	754,000
Intrafund Transfers-Park Board	831,748	1,088,287	1,088,287	1,144,402
Intrafund Transfers-Library Board	2,645,085	2,837,872	2,837,872	3,068,047
Intrafund Transfers-All Other	3,126,710	2,085,028	2,057,738	2,331,083
Finance	1,312,823	1,380,316	1,382,901	1,350,028
Administration	474,789	476,143	474,603	533,410
Revenue	243,807	229,420	237,883	245,258
Accounting	307,820	328,230	340,411	244,935
Network Administration	286,707	318,522	309,794	327,028
Public Safety	14,348,238	15,251,809	15,225,857	15,771,000
Fire	8,947,352	7,301,981	7,488,944	7,582,121
Administration	876,854	893,072	888,500	1,011,280
Training & Safety	132,800	146,067	146,403	155,195
Prevention	150,413	158,577	160,038	160,892
EMS Transportation	398,882	440,130	404,887	432,525
Suppression	5,390,883	5,658,115	5,807,115	5,832,249
Inspections	438,444	467,841	481,228	447,748
Police	8,982,543	7,482,087	7,457,884	7,731,134
Administration	2,323,277	2,378,919	2,407,414	2,455,488
Training	148,342	154,500	138,200	138,500
Patrol	3,497,178	3,829,368	3,830,320	3,954,835
Detectives	822,429	923,932	892,233	877,794
School Resource Officers	173,319	195,288	180,517	204,767
Public Works	8,811,998	8,832,736	8,829,181	7,185,152
Administration	1,913,369	1,380,148	1,367,842	1,417,332
Garbage & Trash Contract	2,751,075	2,779,000	2,788,551	2,827,000
Heavy Construction	986,512	1,000,651	1,108,171	1,072,399
Traffic & Right-of-Way	1,427,015	1,540,036	1,488,547	1,581,034
Fleet Maintenance	173,127	132,861	161,240	207,267
<b>Total Expenses and Transfers</b>	<b>33,873,633</b>	<b>32,991,028</b>	<b>33,886,898</b>	<b>34,788,248</b>
<b>Surplus (Deficit)</b>	<b>\$ 869,149</b>	<b>\$ 843,472</b>	<b>\$ 616,133</b>	<b>\$ 726,560</b>

Combining Statement of Budgeted General Fund Revenues, Expenditures, and Changes in Fund Balance  
City of Mountain Brook, Alabama  
Year Ended

	2016 Budget											
	General Fund Total	General Operations 100	Park Board 116	Drug Asset Forfeiture 122	Community Fund 143	Emergency Reserves 148	Phase 3 Fields 149	Cash Bonds 153	Court 153	Operating 201	Library 202	Endowment 203
<b>Revenues:</b>												
Taxes	\$ 29,472,000	\$ 29,472,000	\$	\$	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Licenses and permits	4,588,700	588,700			0	0	0	0	0	0	0	0
Intergovernmental	95,714	0	4,500		0	0	46,214	0	0	0	0	0
Charges for services		0		0	0	0	120,948	0	0	9,800	0	0
Fines and forfeitures	673,000	\$15,000	0	0	0	0	0	0	48,000	10,000	0	0
Grants	11,138	0	0	0	0	0	0	0	11,138	0	0	0
Investment Earnings	104,070	90,000	0	0	0	8,200	0	0	0	70	200	0
Miscellaneous	200,000	200,000	0	0	0	0	0	0	1,800	0	0	0
<b>Total Revenues</b>	<b>35,884,378</b>	<b>35,494,800</b>	<b>134,200</b>	<b>0</b>	<b>0</b>	<b>8,200</b>	<b>177,162</b>	<b>0</b>	<b>69,838</b>	<b>10,070</b>	<b>200</b>	<b>0</b>
<b>Expenditures:</b>												
General	72,562	872,962	0	0	0	0	0	0	0	0	0	0
Police	1,698,728	1,698,728	0	0	0	0	0	0	0	0	0	0
Sanitation	4,581,022	4,581,022	0	0	0	0	0	0	0	0	0	0
Security	1,270,288	0	1,151,802	0	0	0	138,648	0	0	0	0	0
Library	3,160,345	0	0	0	0	0	0	0	2,772,806	387,680	0	0
Debt service	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Expenditures</b>	<b>36,643,283</b>	<b>28,132,688</b>	<b>1,151,802</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>138,648</b>	<b>0</b>	<b>2,772,806</b>	<b>387,680</b>	<b>0</b>	<b>0</b>
<b>Excess (deficiency) of revenues over expenditures</b>	<b>8,320,867</b>	<b>9,332,118</b>	<b>(917,602)</b>	<b>0</b>	<b>0</b>	<b>8,200</b>	<b>36,616</b>	<b>0</b>	<b>(2,703,047)</b>	<b>(377,608)</b>	<b>200</b>	<b>0</b>
<b>Other Financing Sources (Uses):</b>												
Proceeds from the issuance of debt	0	0	0	0	0	0	0	0	0	0	0	0
Operating transfers in	0	0	0	0	0	0	0	0	0	0	0	0
Operating transfers (out)	(4,803,824)	(8,825,554)	997,402	0	0	25,000	(38,517)	0	2,703,047	255,000	0	0
Operating transfers in-component unit	25,000	0	0	0	0	0	0	0	0	25,000	0	0
Donations	81,402	0	0	0	0	0	0	0	0	81,402	0	0
<b>Total Other Financing Sources</b>	<b>(4,577,224)</b>	<b>(8,825,554)</b>	<b>997,402</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Excess (Deficiency) of Revenues and Other Financing Sources Over Expenditures and other Financing Uses</b>	<b>743,783</b>	<b>726,834</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>33,200</b>	<b>(1)</b>	<b>0</b>	<b>0</b>	<b>(14,188)</b>	<b>200</b>	<b>0</b>
<b>Fund balance, beginning of year</b>					<b>10,970</b>	<b>2,433,200</b>				<b>(14,188)</b>	<b>200</b>	
<b>FUND BALANCES, END OF YEAR</b>												

Combining Statement of Budgeted Capital Project Funds Revenues, Expenditures, and Changes in Fund Balance  
City of Mountain Brook, Alabama  
Year Ended

	2016 Budget			
	Capital Projects Total	Infrastructure Projects 617	Grant Funded 428	Capital 441
<b>Revenues:</b>				
Licenses and permit	\$ 0	\$ 0	\$ 0	\$ 0
Intergovernmental	0	0	0	0
Charges for services	0	0	0	0
Fines and forfeitures	0	0	0	0
Grants	0	48,000	995,000	0
Investment Earnings	29,200	10,000	1,200	18,000
Miscellaneous	25,000	0	0	25,000
<b>Total Revenues</b>	<b>1,997,200</b>	<b>58,000</b>	<b>996,200</b>	<b>43,000</b>
<b>Expenditures:</b>				
General government	1,258,520	1,200,000	0	158,520
Library	2,098,633	0	0	2,098,633
Sanitation	5,858	4,154,475	1,232,705	548,779
Recreational	373,150	316,150	0	67,000
Library	75,000	0	0	75,000
Debt service	0	0	0	0
<b>Total Expenditures</b>	<b>8,857,262</b>	<b>5,670,625</b>	<b>1,232,705</b>	<b>2,939,932</b>
<b>Excess (deficiency) of revenues over expenditures</b>	<b>(6,860,062)</b>	<b>(5,612,625)</b>	<b>(236,505)</b>	<b>(2,896,932)</b>
<b>Other Financing Sources (Uses):</b>				
Proceeds from the issuance of debt	0	0	0	0
Operating transfers in	3,88,342	1,036,685	200,000	2,747,857
Operating transfers (out)	(291,641)	(291,641)	0	0
Operating transfers in-component unit	0	0	0	0
Donations	0	0	0	0
<b>Total Other Financing Sources</b>	<b>3,883,701</b>	<b>745,044</b>	<b>200,000</b>	<b>2,747,857</b>
<b>Excess (Deficiency) of Revenues and Other Financing Sources Over Expenditures and other Financing Uses</b>	<b>(3,076,361)</b>	<b>(4,867,581)</b>	<b>(46,505)</b>	<b>(143,275)</b>
<b>Fund balance, beginning of year</b>	<b>13,192,727</b>	<b>5,638,163</b>	<b>689,070</b>	<b>7,06,000</b>
<b>FUND BALANCES, END OF YEAR</b>	<b>\$ 8,894,366</b>	<b>\$ 878,682</b>	<b>\$ 639,565</b>	<b>\$ 7,322,125</b>

APPENDIX 6

Combining Statement of Budgeted Other Governmental Funds Revenue, Expenditures, and Changes in Fund Balance  
City of Mountain Brook, Alabama  
Year Ended

	2016 Budget							
	Other Governmental Funds Total	64	Gasoline Tax Funds 78	46	26	5-911 District 631	Corrections Fund 664	Debt Service 600
<b>Revenues:</b>								
Taxes	300	58,000	\$ 200	\$ 121,000	\$ 5,300	\$ 0	\$ 0	\$ 0
Licenses and permits	0	0	0	0	0	0	0	0
Intergovernmental	0	0	0	0	0	0	0	0
Charges for services	.000	0	0	0	0	388,000	0	0
Fines and forfeitures	0	0	0	0	0	2,100	180,000	0
Grants	0	0	0	0	0	0	0	0
Investment Earnings	100	0	300	40	1,300	0	0	1,000
Miscellaneous	0	0	0	0	0	0	0	0
<b>Total Revenues</b>	<b>1,145,840</b>	<b>58,100</b>	<b>262,700</b>	<b>121,260</b>	<b>5,348</b>	<b>391,480</b>	<b>180,000</b>	<b>1,000</b>
<b>Expenditures:</b>								
General government	268,393	0	0	0	0	0	268,39	800
Public safety	435,185	0	0	0	0	314,296	1,360	0
Street & sanitation	1,200,510	52,696	837,160	250	9,715	0	0	0
Recreational	0	0	0	0	0	0	0	0
Library	0	0	0	0	0	0	0	0
Debt service	0	0	0	0	0	0	0	3,748,841
<b>Total Expenditures</b>	<b>1,904,188</b>	<b>52,696</b>	<b>837,160</b>	<b>250</b>	<b>9,715</b>	<b>314,296</b>	<b>269,652</b>	<b>3,748,841</b>
<b>Excess (deficiency) of revenues over expenditures</b>	<b>(758,348)</b>	<b>(3,596)</b>	<b>(464,960)</b>	<b>(169,230)</b>	<b>(4,375)</b>	<b>77,104</b>	<b>(186,282)</b>	<b>(3,746,441)</b>
<b>Other Financing Sources (Uses):</b>								
Proceeds from the issuance of	0	0	0	0	0	0	0	0
Operating transfers in	395,262	0	200,000	0	0	0	199,262	591,841
Operating transfers (out)	0	0	0	0	0	0	0	0
Operating transfers in-component unit	0	0	0	0	0	0	0	0
Donations	0	0	0	0	0	0	0	0
<b>Total Other Financing Sources</b>	<b>395,262</b>	<b>0</b>	<b>200,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>199,262</b>	<b>591,841</b>
<b>Excess (Deficiency) of Revenues and Other Financing Sources Over Expenditures and Other Financing Uses</b>	<b>(363,086)</b>	<b>(3,596)</b>	<b>(264,960)</b>	<b>(169,230)</b>	<b>(4,375)</b>	<b>77,104</b>	<b>(186,282)</b>	<b>(3,154,600)</b>
<b>FUND BALANCES, END OF YEAR</b>	<b>\$ 777,848</b>	<b>\$ 12,918</b>	<b>\$ 512,582</b>	<b>\$ 60,800</b>	<b>\$ 5,000</b>	<b>\$ 487,840</b>	<b>\$ 0</b>	<b>\$ 897,287</b>
		%	73%	%	2%			

APPENDIX 6

Statement of Changes in Fiduciary Net Position  
Other Post-Employment Benefits Trust Fund  
Year Ended September 30

	Actual 2014	Budget 2015	Projected 2015	Budget 2016
<b>ADDITIONS</b>				
Contributions				
215-3406-4810 Employer	\$ 659,756	\$ 593,000	\$ 700,000	\$ 701,000
215-3407-4231 Plan members	138,765	167,000	145,000	152,000
215-3407-4400 Investment earnings	14,110	20,000	32,000	18,000
<b>TOTAL ADDITIONS</b>	<b>812,631</b>	<b>780,000</b>	<b>877,000</b>	<b>871,000</b>
<b>DEDUCTIONS</b>				
215-1115-6130 Benefits	496,321	554,000	613,000	553,000
215-1100-6*** Administrative expense	3,222	5,800	13,990	0
<b>TOTAL DEDUCTIONS</b>	<b>499,543</b>	<b>559,800</b>	<b>626,990</b>	<b>553,000</b>
<b>NET INCREASE</b>	<b>313,088</b>	<b>220,200</b>	<b>250,010</b>	<b>318,000</b>
Net position held in trust for other post-employment benefits, beginning of year	1,260,448	1,571,336	1,571,336	1,921,346
<b>NET POSITION HELD IN TRUST FOR OTHER POST-EMPLOYMENT BENEFITS, END OF YEAR</b>	<b>1,573,536</b>	<b>1,791,536</b>	<b>1,821,346</b>	<b>2,239,346</b>

Note:  
Effective October 1, 2006, GASB 45 required local governments to account for their other post-employment benefit plans (OPEB) similar to its method of accounting for its defined benefit pension plans. The City's OPEB plan includes retiree medical insurance. On July 27, 2009, the City Council authorized the creation of an Internal Revenue Code Section 115 trust (Resolution No. 09-101) and began depositing funds into the trust to offset its obligation for retiree medical benefits. Following is a summary of the City's deposits into the Sec. 115 trust since its creation, and trust balances, actuarial accrued liability (AAL) and unamortized actuarial accrued liability (UAAL) as of September 30:

	September 30					
	Trust Deposit	Net Premiums	Total Expense	Trust Balance	AAL	UAAL
2016 Budgeted	\$ 300,000	\$ 401,000	\$ 701,000	\$ 2,239,346	\$ (4,795,965)	\$ (2,556,619)
2015 Projected	300,000	400,000	700,000	1,821,346	(4,408,860)	(2,487,514)
2014	300,000	359,756	659,756	1,571,336	(3,892,253)	(2,420,917)
2013	320,000	350,923	670,923	1,260,448	(3,560,421)	(2,299,673)
2012	300,000	354,828	654,828	925,335	(3,155,271)	(2,229,936)
2011	200,000	364,016	564,016	613,573	(3,249,729)	(2,636,156)
2010	200,000	322,671	522,671	405,024	(3,473,472)	(3,070,448)
2009	180,000	35,118	215,118	196,320	(2,859,543)	(2,683,223)
	<b>\$ 2,100,000</b>	<b>\$ 2,359,312</b>	<b>\$ 4,459,312</b>	<b>\$ 2,239,346</b>	<b>\$ (16,152,939)</b>	<b>\$ (10,147,936)</b>

Salaries and Benefits Summary  
City of Mountain Brook, Alabama

Object Number	Description	Actual 2014	Budget 2015	Projected 2015	Budget 2016
<b>City-wide Totals (All Funds and Departments Combined)</b>					
6001	Salaries Incl Annual Increase	\$ 13,574,048	\$ 14,330,258	\$ 14,182,458	\$ 14,809,038
6004	Overtime Incl Annual Increase	\$ 494,449	\$ 488,821	\$ 490,455	\$ 543,576
6010	Longevity	\$ 439,998	\$ 440,000	\$ 440,000	\$ 438,534
6011	Service Awards	\$ 3,795	\$ 4,778	\$ 4,458	\$ 5,913
6110	FICA	\$ 1,075,836	\$ 1,167,682	\$ 1,142,322	\$ 1,192,191
6120	RSA	\$ 1,521,480	\$ 1,680,436	\$ 1,685,598	\$ 1,738,583
100-1115-6120	CIGNA Retiree 3% COLA (09-128)	\$ 77,481	\$ 29,700	\$ 27,618	\$ 28,000
6130	Medical	\$ 1,371,647	\$ 1,441,000	\$ 1,403,295	\$ 1,584,740
100-1115-6130	Retiree Medical Trust Deposits	\$ 658,756	\$ 593,000	\$ 700,000	\$ 701,000
6131	Dental	\$ 4,453	\$ 2,360	\$ 5,533	\$ 4,450
6132	GTL	\$ 19,549	\$ 21,000	\$ 18,678	\$ 20,300
6133	LTD	\$ 47,605	\$ 55,283	\$ 49,036	\$ 56,288
6134	Flex	\$ 2,112	\$ 2,160	\$ 1,820	\$ 2,160
6140	W/Comp	\$ (148,518)	\$ 154,998	\$ 263,636	\$ 250,002
6152	Pre-Emp Exams	\$ 3,701	\$ 1,680	\$ 921	\$ 2,680
6153	Drug Tests	\$ 1,480	\$ 3,720	\$ 1,475	\$ 3,720
6180	Auto Allowance	\$ 48,000	\$ 48,000	\$ 51,775	\$ 49,800
6182	Declined Medical	\$ 8,163	\$ 9,142	\$ 8,861	\$ 9,142
<b>Total Labor Cost</b>		<b>\$ 19,203,035</b>	<b>\$ 20,473,998</b>	<b>\$ 20,499,036</b>	<b>\$ 21,220,097</b>

Object Number	Description	2014	2015	2015	2016
<b>City-wide Totals (All Funds and Departments Combined)</b>					
6001	Salaries Incl Annual Increase	\$ 13,574,048	\$ 14,330,258	\$ 14,182,458	\$ 14,809,038
6004	Overtime Incl Annual Increase	\$ 494,449	\$ 488,821	\$ 490,455	\$ 543,576
6010	Longevity	\$ 439,998	\$ 440,000	\$ 440,000	\$ 438,534
6011	Service Awards	\$ 3,795	\$ 4,778	\$ 4,458	\$ 5,913
6110	FICA	\$ 1,075,836	\$ 1,167,682	\$ 1,142,322	\$ 1,192,191
6120	RSA	\$ 1,521,480	\$ 1,680,436	\$ 1,685,598	\$ 1,738,583
100-1115-6120	CIGNA Retiree 3% COLA (09-128)	\$ 77,481	\$ 29,700	\$ 27,618	\$ 28,000
6130	Medical	\$ 1,371,647	\$ 1,441,000	\$ 1,403,295	\$ 1,584,740
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6153	Drug Tests	\$ 1,480	\$ 3,720	\$ 1,475	\$ 3,720
6180	Auto Allowance	\$ 48,000	\$ 48,000	\$ 51,775	\$ 49,800
6182	Declined Medical	\$ 8,163	\$ 9,142	\$ 8,861	\$ 9,142

Budget Planning Worksheet  
City of Mountain Brook, Alabama  
Year Ended September 30, 2016

Employee Count

Fund-Dept	Division Name	Full-Time Employees				Part-Time Employees			
		2014	2015	2015	2016	2015	2015	2016	
100-1100	Administration	4	4		2	1	0	1	1
<b>Department Totals</b>									
100-1105	Planning, City & Sustainability	0	2	2	3	0	0	0	0
<b>Department Totals</b>									
100-1211	City Clerk	1	1	1	1	0	0	0	0
100-1212	Revenue	3	4	3	3	1	1	1	1
100-1213	Accounting	4	4	3	4	0	0	0	0
100-1214	Network Administration	2	2	2	2	0	0	0	0
554-1218	Court	2	2	2	2	1	1	1	1
<b>Department Totals</b>									
100-1300	Inspection Services	4	4	4	3	0	0	0	0
<b>Department Totals</b>									
100-3410	Fire-Administration	2	2	2	2	0	0	0	0
100-3417	Fire-Training	1	1	1	1	0	0	0	0
100-3440	Fire-Prevention	1	1	1	1	0	0	0	0
100-3441	Fire-Transportation	4	4	4	4	0	0	0	0
100-3442	Fire-Suppression	55	55	55	55	0	0	0	0
<b>Department Totals</b>									
100-3510	Police-Administration	17	17	16	17	1	1	1	1
100-3550	Police-Patrol	41	43	40	46	0	0	0	0
100-3551	Police-Detectives	7	7	7	7	0	0	0	0
100-3552	Police-SRO	2	2	2	2	0	0	0	0
<b>Department Totals</b>									
100-6010	Public Works-Admin	6	5	5	5	0	0	0	0
100-6051	Public Works-Heavy Const	11	11	12	11	0	0	0	0
100-6052	Public Works-Right-of-Way	15	16	15	16	0	0	0	0
100-6053	Public Works-Shop	5	5	5	5	0	0	0	0
<b>Department Totals</b>									
115-7800	Park					0	4	0	4
<b>Department Totals</b>									
701-1100	Libra	1				19	19	15	16
<b>Department Totals</b>									
<b>Totals</b>		<b>223</b>	<b>230</b>	<b>222.78</b>	<b>231</b>	<b>23</b>	<b>26</b>	<b>19</b>	<b>26</b>
		<b>9/27/2013</b>		<b>4/11/2014</b>		<b>9/27/2013</b>		<b>4/11/2014</b>	

**Intrafund Transfers**  
**City of Mountain Brook**  
**Year Ended September 30,**

Dept	Ledger Number	Description	Actual 2014	Budget 2015	Projected 2015	Budget 2015	Cross Reference
<b>(3900) Intrafund Transfers</b>							
	100-3800-4831	Transfers-E911	\$ ,000	\$ 000	\$ (200,000)		1
<b>(3408) Intrafund Transfers</b>							
	115-3408-4810	Transfers-City General Fund	\$ 1	\$ 190	\$ (1,018,858)		15
	148-3408-4810	Transfers-City General Fund	\$ (94,824)	\$ (25,000)			2
	149-3408-4810	Transfers City General Fund	\$ 42,850	\$ 41,367			18
	215-3408-4810	Transfers-General Fund	\$ (870,823)	\$ (668,600)			13
	417-3408-4810	Transfers-General Fund	\$ 1,642,859	\$ (611,358)	\$ (611,358)		14
	428-3408-4810	Transfers-City General Fund	\$ 0	\$ 0	\$ 0		
	441-3408-4810	Transfers-City General Fund	\$ (3,931,450)	\$ (525,379)			12
	441-3408-4811	Transfers-City Gen Fund-ERS	\$ (1,592,938)	\$ (1,828,886)			17
	441-3408-4815	Transfers-Park Board-ERS	\$ (139,365)	\$ (132,910)			17
	441-3408-4831	Transfers-E-911	\$ 0	\$ 0	\$ 0	\$ 0	
	441-3408-4871	Transfers-Library Operating	\$ (71,150)	\$ (98,415)			17
	522-3408-4810	Transfers-City General Fund	\$ (100,000)	\$ (100,000)	\$ (100,000)		3
	554-3408-4810	Transfers-City General Fund	\$ (132,397)	\$ (216,007)	\$ (216,007)		4
	600-3408-4810	Transfers-City General Fund	\$ (300,000)	\$ (300,000)	\$ (300,000)		5
	600-3408-4817	Transfers-One Cent Sales Tax	\$ (358,141)	\$ (361,191)			6
	701-3408-4810	Transfers-City General Fund	\$ (2,343,651)	\$ (2,552,290)	\$ (2,552,290)		7
	702-3408-4810	Transfers-City General Fund	\$ (251,000)	\$ (255,000)	\$ (255,000)		8
	702-3408-4873	Transfers-Library Endowment	\$ 53	\$ 0			9
	703-3408-4872	Transfers-Temp Restricted	\$ (53)	\$ 0	\$ 0		9
<b>(1115) Unassigned Benefits</b>							
	100-1115-8190	Benefits-Medical Ina/115 Trust	\$	\$ 666,600			13
<b>(1116) Intrafund Transfers (ERS)</b>							
	100-1116-8815	Transfers-Parks & Recreation	\$	\$ 996,190			15
	100-1116-8817	Transfers-Capital One Cent Tax	\$	\$ 611,358			14
	100-1116-8822	Transfers-Seven Cent Gas Tax	\$	\$ 100,000	\$ 100,000		3
	100-1116-8828	Transfers-Grant Funded Proj	\$	\$ 0			
	100-1116-8841	Transfers-City Capital Proj	\$	\$ 525,378			12
	100-1116-8842	Transfers-Capital ERS	\$	\$ 387,950			17
	100-1116-8845	Transfers-Emergency Storm Res	\$	\$ 25,000	\$ 25,000		2
	100-1116-8848	Transfers-Phase 3 Fields	\$	\$ (41,367)			16
	100-1116-8854	Transfers-Corrections Fund	\$	\$ 216,007			4
	100-1116-8862	Transfers-Debt Svc Interest	\$	\$ 3	\$ 300,000		5
	100-1116-8871	Transfers-Library Operating	\$	\$			7
	100-1116-8872	Transfers-Library Books	\$	\$	\$ 255,000		8

**Intrafund Transfers**  
**City of Mountain Brook**  
**Year Ended September 30,**

Dept	Ledger Number	Description	Actual 2014	Budget 2015	Projected 2015	Budget 2015	Cross Reference
	100-1216-6942	Transfers-Capital ERS	\$ 2,330	\$ 3,78	\$ 3,783	\$ 54,000	17
	100-1216-6942-12	Transfers-Capital ERS	\$ 1,230	\$ 1,40	\$ 1,400	\$ 0	17
	100-1216-6942-12	Transfers-Capital ERS	\$ 4,333	\$ 4,75	\$ 4,753	\$ 0	17
	100-1216-6942-12	Transfers-Capital ERS	\$ 54,622	\$ 57,77	\$ 57,777	\$ 0	17
	100-1316-6942	Transfers-Capital ERS	\$ 3,333	\$ 3,33	\$ 3,333	\$ 16,800	17
	100-3416-6942	Transfers-Capital ERS	\$ 411,639	\$ 382,46	\$ 382,461	\$ 493,933	17
	100-3516-6942	Transfers-Capital ERS	\$ 212,966	\$ 239,71	\$ 239,719	\$ 381,541	17
	100-3516-6942-3E	Transfers-Capital ERS	\$ 180,172	\$ 194,20	\$ 194,201		17
	100-3516-6942-3E	Transfers-Capital ERS	\$ 66,133	\$ 42,56	\$ 42,598		17
	100-6816-6942	Transfers-Capital ERS	\$ 109,200	\$ 114,12	\$ 114,125	\$ 543,750	17
	100-6816-6942-6E	Transfers-Capital ERS	\$ 180,550	\$ 170,32	\$ 170,331		17
	100-6816-6942-6E	Transfers-Capital ERS	\$ 158,800	\$ 129,03	\$ 129,039		17
	100-6816-6942-6E	Transfers-Capital ERS	\$ 69,450	\$ 97,41	\$ 97,416		17
	115-7816-6942	Transfers-Capital ERS	\$ 139,385	\$ 132,91	\$ 132,910	\$ 147,000	17
	417-1116-6961	Transfers-Debt Svc Principal	\$ 185,000	\$ 205,00	\$ 205,000	\$ 3,675,000	8
	417-1116-6962	Transfers-Debt Svc Interest	\$ 163,141	\$ 156,16	\$ 156,191	\$ 71,641	8
	531-3516-6910	Transfers-City General Fund	\$ 200,000	\$ 200,00	\$ 200,000	\$ 200,000	1
	701-1116-6942	Transfers-Capital ERS	\$ 71,150	\$ 98,41	\$ 98,415	\$ 102,000	17
<b>(3689) Police - Capital Outlay</b>							
	531-3580-6941	Transfers-City Capital Proj	\$	\$	\$	\$	0
<b>Report Totals (Must Net to Zero)</b>			\$ 0	\$ 0	\$ 0	\$ 0	

**New Capital Purchase Transfers from General Fund  
City of Mountain Brook  
Year Ended September 30, 2016**

Dept Division	General Fund 100	New Capital 417	Capital 428	C/O ERS Capital 441	E911 E911 531	Total
1190 Administration	\$ 0	\$ 1,200,000	\$ 0	\$ 15,000	\$ 0	\$ 1,215,000
1195 Planning	\$ 0	\$ 0	\$ 0	\$ 81,000	\$ 0	\$ 81,000
1290 Finance	\$ 0	\$ 0	\$ 0	\$ 132,520	\$ 0	\$ 132,520
1390 Inspections	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
3490 Fire	\$ 402,950	\$ 0	\$ 0	\$ 850,000	\$ 0	\$ 1,252,950
3590 Police	\$ 183,183	\$ 0	\$ 0	\$ 590,500	\$ 0	\$ 773,683
6890 Public Works	\$ 15,500	\$ 4,154,475	\$ 1,252,705	\$ 531,279	\$ 0	\$ 5,953,959
7790 Library	\$ 0	\$ 0	\$ 0	\$ 75,000	\$ 0	\$ 75,000
7890 Park & Recreation	\$ 7,000	\$ 316,150	\$ 0	\$ 50,000	\$ 0	\$ 373,150
<b>Capital Expenditures</b>	<b>\$ 608,633</b>	<b>\$ 6,670,825</b>	<b>\$ 1,252,705</b>	<b>\$ 2,325,299</b>	<b>\$ 0</b>	<b>\$ 9,857,282</b>
<b>Manual Transfer Adjustments:</b>						
Estimated Grant Proceeds & Interest Income			\$ (996,200)			\$ (996,200)
Fiscal 2015 carry-over projects (Public Works)	\$ (3,861,809)					\$ (3,861,809)
Fiscal 2015 carry-over projects (Park Board)	\$ (124,131)					\$ (124,131)
Lane Parks \$4MM total less \$3.5MM transf in FY 2015	\$ 500,000					\$ 500,000
Fiscal 2015 Match Transferred Prior to Construction			\$ (166,005)			\$ (166,005)
Advance Project Match Transferred (Supports \$547,500 In Construction @ 90% Match)			\$ 109,500			\$ 109,500
Piggly Wiggly Land Acquisition (Already Transferred)	\$ (1,100,000)					\$ (1,100,000)
APPLE Grant Revenue	\$ (48,000)					\$ (48,000)
<b>Intrafund Transfer Amounts</b>	<b>\$ 608,633</b>	<b>\$ 1,038,685</b>	<b>\$ 200,000</b>	<b>\$ 2,325,299</b>	<b>\$ 0</b>	<b>\$ 4,170,617</b>
<b>Accounting Totals</b>						
100-1118-6941 Debit	\$ 608,633					\$ 608,633
441-3408-4811 (Credit)	\$ (608,633)					\$ (608,633)
100-1118-6917 Debit		\$ 1,038,685				\$ 1,038,685
417-3408-4810 (Credit)		\$ (1,038,685)				\$ (1,038,685)
100-1118-6928 Debit			\$ 200,000			\$ 200,000
428-3408-4810 (Credit)			\$ (200,000)			\$ (200,000)
531-3590-6941 Debit				\$ 0	\$ 0	\$ 0
441-3408-4831 (Credit)				\$ 0	\$ 0	\$ 0
<b>Net Transfers (Must Sum to Zero)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>

APPENDIX 6

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT made by and between SAM GASTON ("Gaston") and the CITY OF MOUNTAIN BROOK, ALABAMA ("City").

WHEREAS, Gaston has satisfactorily served as City Manager for the City since June 1993; and

WHEREAS, Gaston and the City have agreed that the terms and conditions of Gaston's continued employment should be memorialized and set forth in a formal contract of employment in order to promote clarity and avoid misunderstanding;

PREMISES CONSIDERED, Gaston and the City agree to the following terms and conditions:

1. Appointment as City Manager. Duties. Gaston shall serve as City Manager of the City of Mountain Brook, Alabama, and, in such capacity, shall perform such tasks and duties as may be prescribed and/or directed by the governing body or by applicable ordinance or statute. Gaston shall devote all of his productive time, ability and attention to the business of the City during the term of his appointment and shall not engage in any other employment or pursuit that would conflict or interfere with his duties and responsibilities as City Manager.

2. Term of Appointment. The term of Gaston's appointment shall be as provided by law.

3. Cancellation/Notice. Gaston's appointment and the City's obligations hereunder may be terminated by (i) operation of law; (ii) termination thereof by the governing body without cause during his term of appointment; (iii) termination thereof by the governing body for cause during his term of appointment; and (iv) Gaston's voluntary resignation.

The City may at its option terminate Gaston's appointment at any time for cause. For purposes of this Agreement, termination "for cause" shall include, but not be limited to, viz: (i) any act of theft, embezzlement, immoral conduct, sexual harassment, use of illicit drugs, or intoxication while acting as an employee of the City; (ii) the conviction for any crime involving moral turpitude; (iii) the willful neglect by Gaston of his duties hereunder; or (iv) the continued breach of any material term or condition of this Agreement by Gaston after written notice. Upon any such termination by the City for cause, Gaston shall only be entitled to the compensation and benefits provided in this Agreement (including accrued but unused vacation and sick leave) computed on a pro-rated basis up to and including the date of such termination, and shall be entitled to no further compensation subsequent to said date except as may be required by law. Any termination for cause by the City shall not prejudice its rights to seek any other redress or remedy to which it may be entitled under the law.

The City may also, at its option, terminate this Agreement at any time without cause. In the event of any termination by the City of this Agreement without cause prior to the expiration of Gaston's term as provided by law, the City shall be fully obligated to pay to Gaston his full salary and fringe benefits, including but not limited to any accrued but unused vacation and sick leave, only for the four (4) month period immediately following said date of termination. In exchange for said payments by the City, Gaston agrees to make himself available to provide consulting services to the City as may be reasonably requested during said four (4) month period.

Gaston shall provide the City at least sixty (60) days' advance written notice of his resignation. Upon termination of his employment, Gaston shall be paid for any accrued but unused sick leave and/or unused vacation days in accordance with generally applicable city policy.

4. Compensation and Benefits. Evaluation. Gaston shall receive as base compensation the sum of one hundred fifty-two thousand eight hundred twenty-four and 60/100 dollars (\$152,824.60) per annum, which shall be paid in regular increments according to the payroll system and schedule then in effect for the City. Gaston shall also receive and be eligible for the same across-the-board raises and fringe benefits (including but not limited to health, dental, disability, and life insurance, longevity pay, vacation, and sick leave) as are accorded or made available to city employees generally; provided, however, that nothing herein shall be construed to confer merit or civil service status on Gaston. Gaston's job performance shall be evaluated periodically at the discretion of the City Council. Upon receipt of a satisfactory performance evaluation, Gaston shall be entitled to such increase in basic compensation for the duration of the term of his appointment as the governing body may deem appropriate.

In addition to the foregoing, and in keeping with past practice, the City shall furnish to Gaston an automobile that may be used by Gaston for city-related functions, activities, and purposes, and for transportation between work location(s) and his personal residence. The City shall pay or provide for all gasoline, oil, maintenance, and insurance expenses associated with operation of the automobile. The City shall also pay for or reimburse Gaston for all actual and reasonable out-of-pocket expenses, dues, and fees incurred by Gaston in performing or attending city-related functions and activities, including but not limited to membership in and attendance at annual or semi-annual conferences sponsored by the ACCMA, the APA, and the ICMA.

5. Notice. All notices, consents, requests, approvals, and other communications provided for herein shall be validly given, made, or served if in writing and delivered personally or sent by registered or certified mail, postage prepaid, as follows, viz:

TO GASTON: Sam S. Gaston, 2028 Clearview Drive, Birmingham, AL 35244

TO CITY: City of Mountain Brook, c/o The Mayor, P. O. Box 130009, Mountain Brook, AL 35213-0009

6. Modification. This Agreement cannot be changed, modified, or amended in any respect except by a written instrument signed by both parties.

7. Entire Agreement. This Agreement supersedes all other agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements, as all prior agreements are hereby merged into this Agreement.

8. Severability. If any part, section or subdivision of this Agreement shall be held invalid or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

9. Controlling Law. In the event of a conflict between the terms of this Agreement and applicable state or Federal law, said law(s) shall control, and this Agreement shall be construed with reference to and in accordance with applicable law.

10. Effective Date. This Agreement shall be effective upon approval of an ordinance adopting or ratifying same.

DATED this 14th day of September, 2015.

CITY MANAGER

Sam Gaston

CITY OF MOUNTAIN BROOK

By:

Lawrence T. Oden, Mayor

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